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Racial Discrimination

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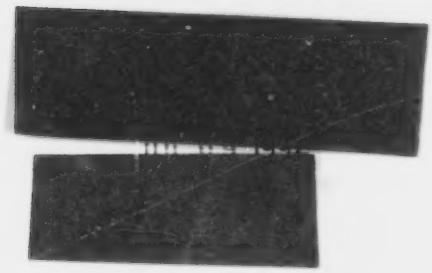
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Fourteenth periodic report of States parties due in 1996



Addendum

Poland*

[16 January 1997]

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* This document contains the thirteenth and fourteenth periodic reports (consolidated), due on 4 January 1994 and 1995, respectively. For the twelfth periodic report of Poland and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/226/Add.2 and CERD/C/SR.981-983.

The information submitted by Poland in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in the basic document HRI/CORE/1/Add.25.

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I. GENERAL

A. Ratification

1. The International Convention on the Elimination of All Forms of Racial Discrimination was adopted and ratified by Poland in 1968 (Journal of Laws: "Dziennik Ustaw" 1969, No. 25, items 187, 188).

B. Constitution

2. The principle of the elimination of racial discrimination has been expressed in the Constitution. At present, in Poland, the Constitutional Act of 17 October 1992 on the mutual relations between the legislative and executive institutions of the Republic of Poland and on local self-government - the so-called Small Constitution - is in force. In accordance with article 77 of this Act the Constitution of the Republic of Poland of 22 July 1952 ceased to be in force; however, some of its provisions have remained in force, including those regarding citizens' fundamental rights and obligations. Thus, article 67, paragraph 2, article 81 and article 82, paragraph 1, of the Constitution are still in force and they stipulate that:

> Article 67 paragraph 2: "Citizens of the Republic of Poland shall have equal rights irrespective of sex, birth, education, profession, nationality, race, religion, social status and origin".
>
> Article 81: "1. Citizens of the Republic of Poland, irrespective of nationality, race or religion shall enjoy equal rights in all fields of public, political, economic, social and cultural life. Infringement of this principle by any direct or indirect privileges or restrictions of rights by reference to nationality, race or religion shall be punishable.
>
> "2. The spreading of hatred or contempt, the provocation of discord or humiliation of man on account of national, racial or religious differences shall be prohibited."
>
> Article 82:
>
> "1. The Republic of Poland shall guarantee freedom of conscience and religion to its citizens. The Church and other religious organizations shall freely exercise their religious functions. Citizens shall not be prevented from taking part in religious activities and rites. No one may be compelled to participate in religious activities and rites".

C. The Convention within the framework of domestic law

3. The draft new Constitution, which at present is being prepared by the Constitutional Committee of the Polish National Assembly, includes provisions (art. 75) which stipulate that international agreements ratified by Poland are sources of law and have priority over the domestic law. As for now, however, since there is no constitutional norm which would regulate the relationship between the domestic law and the international law, such relationship has been

specified by the judicial decisions of the Supreme Court and the Constitutional Tribunal. The following are the most important of such judicial decisions:

(a) The resolution of the Constitutional Tribunal of 7 January 1992: "The Republic of Poland, through ratifying Covenants (international treaties), shall be bound by them and therefore they must be applied, inter alia by courts, and this shall be done in accordance with the principle of proprio vigore, unless the content and the formulation of an international treaty (Covenant) stipulates that it is not a self-executing law.";

(b) The resolution of the Supreme Court of 12 June 1992: "As long as it (the above-mentioned amendment of the Constitution) has not been introduced, it can be assumed ... that adopting a bill on the ratification of an international agreement results in the transformation of this agreement into the domestic law of statutory force. Since the Sejm has passed the bill on the granting of consent to the ratification of the Convention ... and it has been promulgated in the Journal of Laws: "Dziennik Ustaw", this means that the Convention has become equal with a statutory act and thus may be applied by courts like a statutory act with all the resulting consequences.";

(c) The decision of the Supreme Court of 15 June 1993: "The norms of the international law may and should be applied in the domestic legal relations and they do not require taking any additional transformational measures. This, however, refers to such norms of the Conventions or bilateral agreements which, at least in an implicit way, stipulate the intention to apply them within the scope of domestic law of the States parties, or the possibility of such application follows from the provisions contained therein or from other objective circumstances accompanying the conclusion thereof."

4. In accordance with the judicial decisions, the provisions of the domestic law may not conflict with the norms of the international agreements that have been ratified by Poland. Such norms, as well as the judicial decisions of the European Court of Human Rights, should be recognized as an important source for the interpretation of the Polish domestic law (decision of the Supreme Court of 11 January 1995).

5. The International Convention on the Elimination of All Forms of Racial Discrimination includes, inter alia, norms of self-executing character and, as such, they may and should be applied in Poland in a direct way.

D. Human rights

6. In the period covered by this report (1992-1996) Poland has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in the reading changed by Protocol Nos. 2, 3, 5 and 8. The European Convention entered into force in respect of Poland on 19 January 1993. The Republic of Poland also recognized in 1994 Additional Protocol Nos. 1 and 4 and submitted declarations on the recognition of the competence of the European Commission of Human Rights (art. 25, ECHR) as well as on the jurisdiction of the European Court of Human Rights (art. 46, ECHR) (both declarations have been in force since 1 May 1993).

7. Besides, in respect of Poland, the Optional Protocol to the International Covenant on Civil and Political Rights entered into force on 7 February 1992. It provides for the recognition of the competence of the Human Rights Committee to receive and examine communications from persons who claim to have been victims of the infringement of any of the rights specified in the Covenant by a State party thereto.

8. On 1 February 1995 the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force in respect of Poland. The first visit by the Committee for the Prevention of Tortures (CPT) took place from 1 to 12 July 1996.

9. Human rights are more and more widely promoted and taught in Poland. At several universities (e.g. Gdańsk, Poznań, Toruń, Lublin, Warszawa) human rights have become a subject of regular lectures. A number of monographs on human rights have been published. They are widely available in bookshops and libraries. The judicial decisions of the European Commission and Court in Strasbourg are widely published, both in professional publications ("Prokuratura i Prawo" - "Prosecution and Law", "Palestra" - "The Bar") as well as in daily papers (the legal supplement to "Rzeczpospolita" - "The Republic"). The Ministry of Justice organizes a number of training sessions for judges and prosecutors which are devoted to human rights. The Supreme Court organizes seminars on this subject. Particularly intensive training sessions are conducted by the community of attorneys as well as by the Association of Active Judges "Iustitia".

E. Demographic data

10. At present in Poland there are no official statistics concerning the number of national and ethnic minorities in Poland. After the Second World War it was declared that Poland had ceased to be a multinational country and no information on this subject was collected. During the national public census which will be conducted in the year 2000 the respondents will be expected to answer a question about their citizenship. Article 35 of the Act of 29 June 1995 on Public Statistics (Dz. U. No. 88, item 439) specifies the scope of personal data which may be collected in statistical research by virtue of statistical obligation. Article 8 stipulates that, by virtue of statistical obligation, the collection of some information, including information on race, is prohibited. Similar regulations are also included in the draft act on the protection of personal data already submitted to the Sejm, which prohibits processing personal data of a special character, including those revealing racial and ethnic origin. Also, the principles recommended by the international organizations regarding the methodology of public censuses do not allow for the collection of data on race and nationality in the meaning of ethnic origin. In view of the above, only approximate data are available, collected on the one hand by the Parliamentary Commission on National and Ethnic Minorities, and on the other hand by various associations of individual minorities.

11. According to the information from the Parliamentary Commission, the overall population of national minorities in Poland is between 1 million and

1.3 million people, i.e. 3-4 per cent of the whole population of the country. The number of the citizens of non-Polish nationality according to the two sources is illustrated by the table below.

Nationalities	Sources of data	
	Parliamentary Commission	National associations
Belorusian	250-350 000	400 000
Ukrainian	250-300 000	250-300 000
Lithuanian	15-20 000	30 000
Slovak/Czech	15-25 000	25-30 000
German	350 000	250-300 000
Jewish	8-10 000	6-10 000
Gypsy	25 000	3 000

12. There are also minorities of an emigration nature - mainly Greeks but also including Macedonians, Vietnamese, Palestinians, Kurds - numbering from several hundred to 2,000 people in total. Significant religious and ethnic minorities also include Karaims - about 200 persons - and Polish Tartars-Muslims - 3,000 members.

II. INFORMATION CONCERNING THE IMPLEMENTATION OF ARTICLES 2-7 OF THE CONVENTION

A. Article 2

1. Legal regulations

13. The Republic of Poland has undertaken to reject all forms of racial discrimination, and this principle has been elevated to the rank of a constitutional norm. There exist no legal acts which would allow the State authorities and State administrative organs to differentiate between citizens according to racial criteria, and no such acts may be enacted. On the contrary - all forms of racial discrimination are considered to be offences punishable by the penalty of deprivation of liberty (arts. 272, 273, 274, 276, 278, 280 of the Criminal Code). (Cf comments on art. 4 of the Convention).

14. There is an ordinary (complaints, appeals) and extraordinary (cassation) procedure of appealing against sentences and judicial decisions of courts; there is also a possibility of appealing against administrative decisions and then referring the case to the High Administrative Court as being incompatible with the law. Such a system ensures effective control over the decisions of State administrative organs and authorities.

15. If an act or omission of the organs, organizations and institutions which are obliged to comply with and exercise civil rights and freedoms has resulted in any infringement of the rights and freedoms specified in the Constitution or in other provisions of the law, the person whose rights have been violated is entitled to file a complaint to the Ombudsman. The Ombudsman is also competent to examine issues related to the protection of civil rights and freedoms in respect of foreigners, within the scope of the rights and freedoms to which they are entitled in Poland, as well as the rights of persons residing in Poland whose Polish citizenship has not been established and who at the same time are not citizens of another State. In case he ascertains, on the basis of the complaints and requests obtained, that a given binding provision of the law creates opportunity for an infringement of civil rights and freedoms, the Ombudsman may, among other measures, apply to the Constitutional Tribunal to ascertain the incompatibility of the legal act in question with the Constitution. In the period covered in this report, in none of the cases examined has the Ombudsman ascertained discrimination for racial reasons, and the few cases involving alleged national discrimination have not been confirmed. At the same time, in June 1995 the Ombudsman issued a statement in which he pointed to the disturbing phenomenon in some communities of the spreading of racial and religious hatred. In this statement the Ombudsman criticized the well-known sermon preached by a priest in Gdańsk, in which he incited intolerance against people who have not admitted "whether they come from Moscow or from Israel". This pronouncement has been condemned by the President and the Government of the Republic of Poland and criminal proceedings have been instituted against the priest.

16. Review of government policy on the national and local levels with respect to the elimination of racial discrimination is encouraged by the promotion of human rights in Poland as well as by the ratification by Poland of several conventions concerning human rights. (Cf. comments on part I).

17. The ban on financing, protection of and support for racial discrimination by any organization or individual has been guaranteed by virtue of articles 16 and 18 of the Criminal Code, which stipulate that guiding by another person of the execution of an unlawful act (perpetration through guiding), incitement, as well as aiding and abetting (including financing and moral aiding and abetting) of an unlawful act are punishable by the law. Pursuant to article 252 of the Criminal Code, also criminal suport, i.e. aiding the perpetrator in evading criminal responsibility (hiding and obliterating the traces of crime, etc.), as well as public incitement to a crime are punishable by the law (art. 280 of the Criminal Code).

18. The draft new Criminal Code, which is currently being prepared by the Sejm, retains all the existing regulations concerning racial discrimination and, moreover, in the part entitled "Offences against peace, mankind and war crimes", new articles are being introduced and they stipulate that punishment must be used against a person "who, with a view to exterminating in full or in part a national, ethnic, racial, political or religious group or a group which has a specific world outlook, who commits manslaughter or causes serious health injury or a member of such group" or, having the same intention, "causes such living conditions which put the members of this group in danger

of being biologically exterminated, or who uses means aimed at stopping births or forcibly takes away children from such group". Also, preparations for the commission of such offences are punishable by the law. Under penalty, it has also been prohibited to use violence or unlawful threat against persons or against an individual person on account of his national, ethnic, racial, political or religious affiliation, or on account of his being irreligious, as well as to incite the above-described acts.

2. Integrationist movements and organizations

19. In the Republic of Poland there are no massive movements or organizations of a multiracial character because the ethnic composition of Poland's population does not give rise to such a need. Poland is not a multiracial country. There are, however, about 120 associations of national and ethnic minorities. They are, above all, of a socio-cultural character. Such associations have been established by: Belorusians, Gypsies, French, Lithuanians, Germans, Ukrainians, Jews, Polish Tartars, Lemks, Slovaks, Mazurs, Greeks, Vietnamese, Russians and Armenians. The associations promote national culture and represent the social interests of individual nationalities. There are also inter-Church organizations whose objective is the rapprochement between individual denominations. These are: Polish Ecumenical Council, Biblical Society, Council of Evangelic Churches, Polish Buddhist Union and Polish Council of Christians and Jews.

3. Measures taken to guarantee equal rights to minorities

20. In order to safeguard proper development and full exercise of the rights of minorities, the Bureau for the Culture of National Minorities has been established in the Ministry of Culture and Art. At present the Bureau cooperates with 11 representative organizations of the following national and ethnic minorities in Poland: Ukrainian, German, Belorusian, Lithuanian, Tartar, Armenian, Karaim, Czech and Slovak. The responsibilities of the Bureau consist in supporting with funds cultural events organized by minorities, as well as publishing 21 periodicals. Besides, two investments are financed from the State budget: the construction of the Lithuanian Culture House in Puńsk and the construction of the Museum in Hajnówka (Belorusian minority). The General Conservator of Monuments provides supportive funds for the renovation of sacral monuments as well as for Orthodox Church cloisters and cemeteries.

21. In order to safeguard political rights of national minorities, in the Act on the Elections to the Sejm of 28 May 1993, a provision has been included by virtue of which the requirement of the percentage threshold (5 per cent) of votes cast in the whole country does not apply to the electoral committees of the registered organizations of national minorities. In the present composition of the Sejm there are four deputies who represent the German minority and one deputy of the Ukrainian minority (who ran in the capacity of a representative of a political party). Representatives of Belorusian, Lithuanian and Gypsy minorities also ran for the Sejm but did not obtain the required number of votes. In the Senate of the Republic of Poland there is one representative of the German minority. Representatives of national minorities also serve in representative organs of territorial self-government

(town and commune councils). The Belorusian minority is represented in Bialystok (3 council members out of the overall number of 50 seats), in Bielsk Podlaski (7 council members, including the chairman and the mayor, out of 28 seats), in Hajnówka (8 council members out of 28 seats), in Gródek (13 council members, including the chairman and the chief commune administrative officer, out of 18 seats); in the remaining communes Belorusian and Orthodox Church electoral committees have not been set up, although in some communes almost all councils are composed of members of the Belorusian nationality. The Lithuanians have put up their candidates in two communes - in Puńsk they won 15 seats out of the overall number of 18 (including the chief commune administrative officer) and in Sejny (the town) 2 seats out of the overall number of 18, and in the whole commune of Sejny district 6 seats out of the overall number of 18. The Germans have their representatives in a total of 60 communes (in Opole province they put up 320 candidates in 27 communes, winning 178 seats; in Katowice province 94 candidates won 35 seats and in the region of Opole Silesia they are present in 39 councils out of an overall number of 44 communes). Besides, they have their representatives in the town councils of Opole (2/45), Kędzierzyn Koźle (5/36), Kluczbork (3/32) and in Giżycko, Gdańsk and Elbląg 1 council member in each town. The Slovaks are represented altogether by 10 and the Ukrainians by 31 council members.

22. Broader access of national minorities to radio and television was guaranteed in the Act on Radio and Television of 29 December 1992, whereas on the basis of the Act of 7 September 1991 on the Educational System national minorities have the right to teach in their native language. (Cf. comments on art. 7 of the Convention).

B. Article 3

23. The Republic of Poland condemns all racial segregation and apartheid. This has been confirmed in the above-mentioned provisions of the Constitution, which stipulate that everyone shall enjoy civil rights, irrespective of their race; this has also been manifested by recognizing all forms of racial discrimination as offences. Until the time the apartheid policy in the Republic of South Africa was changed, Poland had not maintained any diplomatic or economic relations with this country.

C. Article 4

1. Offences relating to discrimination

24. The Polish Criminal Code recognizes all forms of racial discrimination as offences. Thus, the following articles provide, respectively:

Article 272: "A person who publicly incites conflicts motivated by national, ethnic, racial or religious differences or publicly commends such conflicts shall be liable to the penalty of the deprivation of liberty (...)".

Article 273: "Sect. 1. A person who commits an act specified in article 272 while using press or other means of mass information shall be liable to the penalty of deprivation of liberty (...).

"Sect. 2. A person who - with a view to disseminating it - makes, collects, keeps, carries or sends a letter, printing material, recording, film or another object containing the subject matter specified in article 272 shall be liable to the penalty of deprivation of liberty (...).

"Sect. 3. In the event of convicting for the offence specified in sect. 1 or sect. 2, the court may adjudicate the forfeiture of the tools and other objects which have been used in or have been intended for the commission of the offence, even if they are not the property of the offender".

Article 274: "Sect. 1. A person who publicly insults, derides or humiliates a group of people or an individual person on account of their national, ethnic or racial origin shall be liable to the penalty of deprivation of liberty (...).

"Sect. 2. A person who commits an assault against another person on account of the reason specified in sect. 1 shall be liable to the penalty of deprivation of liberty (...)".

25. The provisions of articles 16 and 18 of the Criminal Code, which are discussed more extensively in the comments on article 2 of the Convention, should also be recalled here; they stipulate that inciting to and aiding and abetting in the above-described offences (including financing them) shall be punishable with the same measure of punishment as the commission thereof.

26. As regards the illegality of and the ban on organizations aiming at racial discrimination, the following provisions of the Criminal Code may be applied:

Article 276: "Sect. 1. A person who participates in an association or an organized group whose objective is the commission of an offence shall be liable to the penalty of deprivation of liberty (...) (the penalty is higher if the association or the organized group is of an armed character - sect. 2).

"Sect. 3. A person who establishes an association or an organized group specified in sect. 1 or sect. 2, or is the leader of such group, shall be liable to the penalty of deprivation of liberty (...)".

Article 278: "Sect. 1. A person who participates in an association whose existence, structure or objective is to be secret to the State authorities, or which has been dissolved, or whose legalization has been refused, shall be liable to the penalty of deprivation of liberty (...).

"Sect. 2. A person who establishes such association or is the leader thereof shall be liable to the penalty of deprivation of liberty (...).

"Sect. 3. A person who takes the leadership in an association which has been dissolved or whose legalization has been refused shall be liable to the penalty of deprivation of liberty (...)".

27. It is also illegal and prohibited under penalty to organize a meeting with a view to committing an offence, or to conduct such a meeting (art. 279); the same applies to public incitement to disobedience, or violent opposition, against a binding legal act (including the Convention) (art. 282).

28. The available data indicate that within the three-year period 1992-1994 (data for 1995 not available) three indictments were brought to court invoking article 272 of the Criminal Code (incitement to conflicts); however, nobody has been convicted. In connection with article 274 of the Criminal Code (insulting, deriding or humiliating on account of national, ethnic or racial origin), in the same period 29 indictments were filed and a total number of 16 persons were convicted.

2. Control of associations and assemblies with a view to counteracting discrimination

29. The Act on Associations of 7 April 1989 (Dz. U. No. 20, item 104 with later amendments) introduces the principle of freedom of association which may be subject to only those restrictions which are stipulated by acts of law and which are necessary to safeguard the interests of State security or public order, as well as the protection of public morals or the protection of rights and freedoms of other people. Foreigners residing in the territory of the Republic of Poland may also set up associations. It is prohibited to establish associations which adopt the principle of absolute obedience of their members to the leadership. Any association is subject to registration by a competent provincial court. The court rules on the registration of an association after having established that its charter is in accordance with the provisions of the law. In the event it has been established that the activities of an association are incompatible with the law, a competent organ of the State administration may request the court that the association be dissolved. This will happen in particular when the activities of the association manifest blatant or persistent violation of the law or of the provisions of its charter, and there are no conditions for altering the activity so that it is compatible with the law or the charter. The court may also repeal a resolution of an association if the resolution is incompatible with the law or the charter of the association.

30. A simplified form of an association is an ordinary association, which does not have legal personality. The court, upon the motion of a prosecutor or a competent organ of the State administration, may prohibit the establishing of such association if its charter is incompatible with the provisions of the law. The above-mentioned regulations allow for the control of associations in order, among other things, to prevent their conducting discriminatory activity in any form prohibited by the law.

31. The Act on Associations of 5 July 1990 (Dz. U. No. 51, item 297) introduces the possibility of controlling associations with a view to preventing the commission of an offence. The commune's organ prohibits a public assembly if its aim or its taking place violates the provisions of the criminal statutes. Besides, the chairman of an assembly has the right to request a person who, through his behaviour, breaches statutory provisions to leave the assembly; he is also obliged to dissolve the assembly if its

participants do not comply with the directives of the chairman or if the proceedings of the assembly violate the provisions of the criminal statutes. An assembly may also be dissolved by a representative of the commune's organ if the chairman does not want to take such a measure.

D. Article 5

1. Right to equal treatment before the courts

32. Access to courts and other organs of court administration is regulated by the following legal acts:

(a) Code of Civil Procedure of 17 November 1964 (Dz. U. No. 43, item 296 with later amendments);

(b) Code of Criminal Procedure of 19 April 1969 (Dz. U. No. 13, item 96 with later amendments);

(c) Code of Procedure on Regulatory Offences of 29 May 1971 (Dz. U. No. 23, item 101 with later amendments);

(d) Labour Code of 26 June 1974 (Dz. U. No. 24, item 141 with later amendments);

(e) Act on Proceedings on Juveniles Matters of 26 October 1982 (Dz. U. No. 35, item 228 with later amendments);

(f) Code of Administrative Procedure of 14 June 1960 (consolidated text: Dz. U. No. 9, item 26 of 1980 with later amendments);

(g) Act on the High Administrative Court of 11 May 1995 (Dz. U. No. 74, item 368 with later amendments);

(h) Act on the Supreme Court of 20 September 1984 with later amendments (consolidated text: Dz. U. No. 13, item 48 of 1994);

(i) Act on the Ombudsman of 15 June 1987 with later amendments (consolidated text: Dz. U. No. 109, item 471).

33. None of the above Acts gives grounds for differentiating between people on account of their race, colour of skin, birth or national or ethnic origin. All the legal Acts must comply with the Constitution, and article 67, paragraph 2, of the constitutional provisions stipulates that citizens of the Republic of Poland have equal rights irrespective of their race or nationality (cf. the remarks in the general part of this report).

34. Article 7, sect. 2, of the Act on the System of the Common Courts of Law of 20 June 1985 (consolidated text: Dz. U. of 1994 No. 7, item 25 with later amendments) stipulates that "proceedings before common courts of law are conducted on the basis of equality of the parties, which have the right to defence as well as the right to appeal to the court of higher instance". An additional guarantee of the principle of equality of the parties is included

in article 8 of this Act, which stipulates that "a person who does not know the Polish language shall have the right to use his native language while appearing before court and to have the assistance of a translator provided free of charge". Further guarantees are included in article 62 of the Code of Criminal Procedure, which stipulates that "if a defendant does not know the Polish language, the decision on levelling the charges, on the indictment, as well as the judgements which are subject to appeal or those which conclude the proceedings, shall be served on or announced to the defendant with an accompanying translation", and in article 159, sect. 1, subparagraph 1, which prescribes that a translator shall be summoned "if there is a need to question a person who does not know the Polish language". The same obligation occurs when there is a need to translate a letter written in a foreign language into the Polish language and vice versa (sect. 2). Article 354 of the Code of Criminal Procedure, in turn, stipulates that the defendant with whom the court communicated through a translator "should, before taking the floor, have at least the final conclusions from the speeches of the parties translated".

35. In criminal proceedings (art. 69 of the Code of Criminal Procedure) there is also a possibility for a defendant who does not have a counsel for the defence of his own choice to request that a counsel for the defence be appointed by the court if the defendant can prove that he cannot afford the costs of the defence without prejudice to the necessary maintenance of himself and his family. A similar possibility emanates from the provisions of the civil law (art. 113 of the Code of Civil Procedure), since a natural person may request exemption from court fees by submitting a declaration to the effect that he cannot incur the fees without prejudice to the necessary maintenance of himself and his family, and the person exempted in full or in part from court fees has the right to apply for the appointment of his attorney (art. 117 of the Code of Civil Procedure).

2. Right to security

36. Use of violence, causing bodily injury, infringing bodily inviolability are recognized as offences and are prohibited under penalty by the Criminal Code. Additionally, the Act on the Police of 6 April 1990 (Dz. U. No. 30, item 179 with later amendments) and the Act on the State Security Bureau of 6 April 1990 (Dz. U. No. 30, item 180 with later amendments) penalize offences which violate the personal interests of persons through a transgression of rights or non-fulfilment of obligations while acting on duty, through providing personal information obtained during operational and investigative activities to persons other than the court of the prosecutor, or the use of such information against a person for purposes other than criminal prosecution, as well as the offence of obtaining explanations, testimony or a declaration with the use of violence, unlawful threat or moral cruelty. Besides, the personal interests of a man, including health, freedom, honour, inviolability of living quarters and secrecy of correspondence, remain under the protection of the civil law (arts. 23-24 of the Civil Code).

37. Pursuant to the regulations of the Civil Code (arts. 417-418) the State Treasury is responsible for any damage caused by State functionaries while on duty.

3. Election rights

38. Equal election rights and equal possibilities of participating in the conduct of public affairs are stipulated in the binding election law acts in Poland. These are:

(a) Act on the Elections to the Sejm of the Republic of Poland of 28 May 1993 (Dz. U. No. 45, item 205 with later amendments);

(b) Act on the Elections to the Senate of the Republic Poland of 10 May 1991 (consolidated text: Dz. U. No. 54, item 224 of 1994);

(c) Act on the Elections to Commune Councils of 8 May 1990 (consolidated text: Dz. U. No. 17, item 85 of 1996);

(d) Act on the Elections of the President of the Republic of Poland of 27 September 1990 (Dz. U. No. 67, item 398).

39. All the Acts guarantee universality, directness, equality and secrecy of elections. The right to vote is granted to all persons of Polish citizenship (as well as to stateless persons, provided they have been residing in Poland for at least two years in the elections to commune councils or five years in the elections of the President) who, on the date of the elections, are over 18 years of age. Election rights may not be enjoyed only by those persons who have been deprived of public rights by virtue of a final court judgement, who have been deprived of election rights by virtue of a final judgement of the State Tribunal, or those who have been legally incapacitated, in full or in part, by a final court judgement on account of mental disease or a mental deficiency. Any person who enjoys election rights is entered into the register of voters and everyone may file a complaint in respect of any inaccuracies in the register. In the event the complaint is not complied with, the person concerned has the right to file a complaint before court.

40. The criteria for eligibility and suffrage are identical in the elections to commune councils, whereas in the elections to the Sejm and the Senate the right to stand for election is granted to a Polish citizen who enjoys the right to vote if, on the date of the elections, he is over 21 years of age and has been residing in the territory of the Republic of Poland for at least five years. Any Polish citizen who is over 35 years of age and enjoys full election rights can run for President. Putting up a candidate for the presidential office (by social and political organizations or by voters) should be supported with the signatures of at least 100,000 voters.

41. The principle of the equality of elections has also been included in article 95 of the constitutional provisions, which has been maintained in force by the Small Constitution. This article provides that "The right to vote shall be enjoyed by any citizen who is over 18 years of age, irrespective of sex, national and racial origin, religion, education, period of residence, social status, profession, financial situation". The same principle is also stipulated in article 96: "Any citizen may be elected to the Sejm or the Senate if he is over 21 years of age, provided, however, he has been residing in the territory of the Republic of Poland for at least five years".

42. The accessibility of running for State offices may be illustrated by the following data: during the last presidential elections in Poland, 17 candidates for this office had registered; in the elections to the Sejm and the Senate, last organized on 19 September 1993, 10,587 candidates ran for the deputies' seats. This means that an average number of 23 candidates ran for each of the 460 seats, and the senators' seats were sought by 684 candidates, i.e. an average number of 7 candidates for each of the 100 senators' seats. In the elections to the commune councils, organized on 19 June 1993, 181,907 persons ran for a total of 51,926 seats.

4. Other civil rights

43. The right to free movement and to the choice of the place of residence is fully respected in Poland. The only possible exceptions in this field are the statutory limitations provided for in the Decree on the Areas Particularly Important for the Defence of the Country of 6 September 1951 (Dz. U. of 1951, No. 46, item 341) and in the Act on State of Emergency of 5 December 1983 (Dz. U. No. 66, item 297). Pursuant to the above-mentioned regulations the authorities may impose a curfew and introduce the obligation to obtain permission for a change of the place of permanent or temporary residence in respect of persons moving to another place, as well as the obligation to register at the new place within the period of 12 hours from the time of arrival.

44. The Polish criminal law stipulates a penalty of deprivation of liberty. A person sentenced to such penalty, among other things, may not, without the consent of the adjudicating organ, change the place of his permanent residence. The same restriction may be applied as a preventive measure in criminal proceedings.

45. The above-described restrictions of free movement, however, are not related in any way to any form of racial discrimination.

46. Pursuant to the Act on Passports of 29 November 1990 (Dz. U. No. 2, item 5 with later amendments) each Polish citizen, irrespective of his race, nationality or religion, has the right to obtain a passport and thus to freely cross the border and stay abroad. A passport may only be refused upon the motion of: (a) the court which conducts criminal or civil proceedings against the person who applies for the passport; (b) the Prosecutor General, if such person has become the subject of proceedings related to the taking over of prosecution for an offence committed abroad; (c) the organ which conducts against such person preliminary or executory proceedings in respect of an indictable offence or in a fiscal penal case. Besides, the issuance of a passport to a minor requires the consent of both parents or legal guardians (unless one of them has been deprived by the court of the right to decide thereof). Article 235 of the Code of Criminal Procedure provides that "in case of justifiable apprehension of an absconder, the interdiction to leave the country by the defendant may be used as a preventive measure; such interdiction may be combined with the withholding of the passport or the interdiction to issue such document". The decision on the use of such measure is made in the form of a judgement which is subject to appeal; however, until such a judgement is passed, the organ which conducts the proceedings may withhold the passport, but only for a period which does not exceed seven days.

47. The Act on Polish Citizenship of 15 February 1962 (Dz. U. No. 10, item 49 with later amendments) does not include any restrictions on account of race, nationality or religion in respect of the right to obtain Polish citizenship.

48. Apart from the general requirements of different sexes, proper age or the interdiction of bigamy, there are no restrictions in Polish law in respect of the right to contract marriage and choose a spouse. There are no restrictions either in respect of the right to possess property, both individually and in conjunction with others. The basic regulation in this field is included in article 140 of the Civil Code which provides that, "within the limits specified by statutory law and the principles of community life, the owner may, to the exclusion of other persons, use a thing in accordance with the socio-economic purpose of his right, and in particular may collect the fruits and other incomes from that thing. He may dispose of that thing within the same limits".

49. As regards the right to inheritance, the only limitation is stipulated in article 1059 of the Civil Code in which the inheritance of a farm is made conditional upon the fulfilment, at the opening of the succession, of one of the following conditions:

"(1) the heirs are permanent directly engaged in agricultural production or

"(2) have acquired vocational education to run agricultural production or

"(3) are minors or are learning a trade or attend school or

"(4) are permanently unfit for work".

50. The freedom of peaceful assembly and the freedom of association have already been discussed in the comments on article 4 of the Convention. It can only be mentioned here that there are some restrictions in this respect stipulated in the regulations on the state of emergency (specified in para. 43). In case of a state of emergency the State authorities may impose a ban on the convening and conducting of all types of assemblies (this, however, does not concern religious services and rites which take place on the premises of churches) and they may suspend the activities of all associations, unions, and social and professional organizations (again, with the exception of churches and religious unions).

5. The right to freedom of thought, conscience and religion

51. The right to freedom of thought, conscience and religion has been guaranteed by the Constitution in article 82 (cf. the general part of this report) and in article 83, which provides that "The Republic of Poland guarantees its citizens freedom of speech, of the press, of assembly and gatherings, of processions and demonstrations".

52. Besides, the Act on the Guarantees for Freedom of Conscience and Religion of 17 May 1989 (Dz. U. No. 29, item 155 with later amendments) is in force. Article 1 of this Act provides that:

> "1. The Republic of Poland guarantees each of its citizens freedom of conscience and religion.
>
> "2. The freedom of conscience and religion involves free choice of religion or beliefs as well as the expression thereof individually and in groups, privately and publicly.
>
> "3. Believing citizens of all denominations as well as non-believers have equal rights in public, economic, social and cultural life".

No one may be discriminated against on account of his religion or beliefs in the domain of religion. Citizens must not be compelled not to participate in religious services and rites or to participate in them (art. 6 of the Act). Foreigners and stateless persons residing in the territory of the Republic of Poland shall enjoy freedom of conscience and religion on a par with Polish citizens (art. of the Act). The above-mentioned articles are an extension of the constitutional guarantees (art. 82).

53. By virtue of enjoying freedom of conscience and religion people may establish churches and religious unions. Currently in Poland there are 112 registered churches and religious unions. The situation of 13 of them has been additionally regulated in the acts on the relations between the State and the relevant church. The remaining churches and unions function on the basis of entry into the register. Such duality is directed only at facilitating the regulation of the legal status of new religious unions. It does not cause any differences in the rights of such unions to perform their religious functions.

54. The Act on the Guarantees for Freedom of Conscience and Religion provides a possibility of requesting exemption from the military service and applying for a substitute service by persons who invoke their religious beliefs or the moral principles they profess. In cases of refusal the conscript is entitled to file a complaint to the administrative court.

55. The Act also guarantees the right to enjoy freedom of conscience and religion and to use objects necessary for exercising religious cults and practices by persons who discharge military service, remain in prison facilities and homes for detained juveniles, persons remanded in custody, those who remain in health service facilities as well as children and teenagers at holiday camps.

56. Persons who are members of churches and other religious unions and whose religious holidays are not officially recognized holidays may, upon request obtain leave from work or school for the period of time necessary to celebrate such holidays in accordance with their religion. The obtaining of the leave is conditional upon making up for the leave period during official holidays or in overtime.

57. The Act of 7 September 1991 on the System of Education (consolidated text: Dz. U. of 1996 No. 67, item 329), in article 12, paragraph 1, while recognizing the right of parents to bring up their children in a religious way, provides that primary public schools should organize religious instruction upon the request of parents, and secondary public schools upon the request of parents or the pupils themselves; after reaching majority, the pupils themselves decide whether to have religion classes.

58. Pursuant to the above-mentioned provision the Minister of National Education issued the Regulation on the conditions and the method of organizing religious instruction in public schools (of 14 April 1992 - Dz. U. No. 36, item 155). The provisions of the Regulation point to the voluntary character of studying religion or ethics. The wish to commence studying religion/ethics may be expressed in the simple form of a declaration. It has been emphasized that taking part in or abstaining from religion/ethics classes may not give rise to any form of discrimination by anyone. The final mark in the subject of religion/ethics does not influence a student's prospects of being promoted to the next class, and the certificate does not show to which of the religions the mark refers. Similar principles have been specified in the Regulation of the Minister of National Education of 3 July 1992 on the conditions required to guarantee the right to religious practices to children and teenagers who remain in correction and open youth establishments, as well as at holiday camps (Official Gazette: Monitor Polski No. 25, item 181).

59. In presenting the Regulation of the Minister of National Education of 14 April 1992, it should be added that it was appealed against by the Ombudsman to the Constitutional Tribunal as being allegedly incompatible with the Constitution. The Constitutional Tribunal confirmed in part the legitimacy of the Ombudsman's claims and declared that some of the provisions of the Regulation were incompatible with the legislation, in particular with the Act on the educational system. As a consequence of the judgement passed by the Constitutional Tribunal, the Regulation was amended on 25 August 1993 (Dz. U. No. 83, item 390).

60. The introduction of religion to public schools gave rise to one of the first applications (No. 23380/94) filed against Poland with the European Commission on Human Rights in Strasbourg, after Poland had acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Commission considered the application to be inadmissible (partly ratione temporis) as manifestly ill-founded. (Please find enclosed a copy of the decision*.)

61. The Republic of Poland guarantees its citizens the right to take part in religious practices and rites also through the mass media, and in particular through the all-Poland radio which, in the field of radio programmes for churches and minority denominations, plays an essential role. The basis for this policy is the agreements concluded with the Polish Ecumenical Council, the Seventh Day Adventists Church and the Union of Jewish Religious Communities in the Republic of Poland, and also by the practice, which has developed over many years, of cooperation between "Polish Radio" SA and

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* Available for consultation in the files of the Secretariat.

religious communities other than the ones mentioned above. Every Sunday, Program IV - Radio BIS airs a 10-minute broadcast in the series "Churches in Poland and in the world" (which primarily is informative) and a one-hour religious service or broadcast of one of the churches. Religious services are also broadcast (apart from Sundays) on church holidays and official holidays.

62. Apart from Programme IV - Radio BIS, minority churches prepare regularly in Programme II of the Polish Radio (once a week) reflections in the series entitled "Five minutes on the Bible", and Programmes I and III present both information and mixed broadcasts devoted to religious communities functioning in Poland (and also the religions of the whole world, religious movements, outstanding Church reformers, evangelists, etc.).

63. "Polish Radio" SA complies also with the request of those Churches and denominations which had not had, and do not have any special agreements with the Polish Radio. The following broadcasts may serve as examples: "Polish Muslims", "The Koran - Holy Book of Islam", "Judaism - Christianity - Islam: Common Roots and Fundamental Differences", "The Church of Mormons", "Pentecostalist Church", "Hare Krishna Movement", "Shintoism", "Polish Buddhists". A number of broadcasts have been of an extra-religious character: they have introduced people of different beliefs, presented the forms and models of the contemporary ecumenical movement, and taught tolerance. Such programmes are also being broadcast nowadays. A special event other than a broadcast (which, however, has found its reflection on the air) was organized in Warsaw on 30 November 1995. It was the session entitled "Pluralism and Tolerance", organized by "Polish Radio" SA together with the Polish Ecumenical Council and the Polish UNESCO Committee, and devoted to the cause of religious, national and ethnic minorities.

64. There are two provisions referring to "Christian values" under the Act on Radio and Television of 29 December 1992 (Dz. U. of 1993, No. 7, item 34 with later amendments). Article 8, paragraph 1, stipulates: "Programmes should respect religious feelings of the audience, and especially respect the Christian system of values." Article 21, paragraph 2, subparagraph stipulates: "Programs of public radio and television should (...) respect the Christian system of values, with the universal ethical principles being considered as the basis thereof." A group of members of Parliament lodged a claim before the Constitutional Tribunal. The claim alleged the incompatibility of the above-quoted provisions with the Constitution due to the violation of the principle of equality and the establishment of preventive censorship. The Constitutional Tribunal decided that there was no incompatibility of the questioned provisions with the Constitution because the former provisions create only a duty of respect for, and not a duty of being led by the values which are of universal, and not only of religious character.

6. Social, economic and cultural rights

65. Social, economic and cultural rights specified in article 5 (e) have been guaranteed in the constitutional provisions (arts. 68-73 and 84-85) and, apart from that, in the Labour Code of 26 June 1974, in the Act of 23 May 1994 on Trade Unions, in the Act of 14 December 1994 on Employment and Counteracting Unemployment and in the Act of 7 September 1991 on the System of Education.

66. More specific information concerning the guarantees for the rights of national minorities has been included in the comments on article 7 of the Convention and in the part discussing the right to freedom of conscience and religion. The right to equal participation in cultural activity, apart from constitutional guarantees, is also secured due to the support and subsidies from the State budget to cultural organizations of national minorities (cf. comments on art. 2 of the Convention).

67. The granting and enjoyment of the rights specified in article 5 (e) of the Convention are not in any way differentiated in respect of race, nationality or religion. The same principle applies to access to all places and facilities intended for use by the general public such as transport, hotels, restaurants, cafés, theatres or parks.

E. Article 6

68. The provisions of the Criminal Code described in the comments on article 4 of the Convention, which recognize all forms of racial discrimination as offences, as well as the principle of legalism binding in accordance with Polish law, which prescribes the institution of criminal proceedings in each case of a justifiable suspicion that an offence has been committed, satisfy the requirements of the Convention. Besides, the comments on article 2 of the Convention include a remark on appeal procedures (ordinary and extraordinary) against sentences, judgements and decisions, as well as on the competence of the Ombudsman.

69. There has also been mention of the responsibility borne by the State, pursuant to the provisions of the Civil Code, for any damage caused by State functionaries.

70. In accordance with article 415 of the Civil Code each person has the right to demand a remedy for the damage caused by another person through the other person's own fault. Compensation claims are also possible within the framework of criminal proceedings (adhesion claims).

F. Article 7

1. Education and teaching

71. The structure of the Polish educational system is specified by the Act on the System of Education of 7 September 1991 with later amendments. The system is based upon the principle of equality of rights and it is structured in the following way. At the age of seven a child begins education in a primary school. Education at the elementary level is obligatory and free of charge. The next stage includes vocational training (vocational schools - three years, technical colleges - four or five years) or general education (comprehensive secondary schools, so called lyceums). At this level education at State schools is also free of charge. Nowadays, so-called private social schools are being established and a tuition fee is charged for studying there. The decision as to which school a child will attend depends solely upon the parents' wishes and their financial situation. None of the schools may make the admission and the teaching of a child conditional upon his race, religion

or nationality. The admission to a school depends on the results of entrance examinations, qualification interviews and comparison of primary school certificates. The education in a comprehensive secondary school as well as in a technical college ends with the matriculation examination, so-called "matura". The passing of this examination is a prerequisite necessary to apply for taking entrance examinations to schools of higher education which, in case of studies in State schools - and they are in the absolute majority - are also free of charge, or to private schools of higher education which charge tuition fees. The studies take about five years. Such a system of education provides the possibility of obtaining a three-level education: primary (obligatory), secondary (vocational or general) and higher education.

72. The act on the System of Education also regulates the issue of organizing in primary and comprehensive secondary schools of native language classes for children of non-Polish nationality. Article 13 of this Act has the following reading: "A school or a public institution shall afford possibilities for its students to maintain the sense of national, ethnic, linguistic and religious identity and in particular to learn their native language as well as their history and culture". Paragraph 2 reads: "Upon the request of parents such teaching may be conducted in separate groups, classes or schools, in groups and classes with additional lessons of the native language as well as in inter-school instruction groups". Such statutory educational rights of national minorities are exercised at all levels of instruction, from kindergarten to primary schools and secondary schools of all types.

73. The Regulation of the Minister of National Education of 24 March 1992 on organizing instruction with a view to maintaining the sense of national, ethnic and linguistic identity of students who belong to national minorities (Dz. U. No. 34, item 150) makes this statutory provision more specific by showing the means to be used in exercising the educational rights of minorities as well as the meachnisms which coordinate the educational policy of the State in this field. Section of the Regulation reads: "The supervision over proper execution of the educational rights of national and ethnic minorities shall be exercised by the school superintendent". Section 3 reads: "Native language classes for national minorities shall be organized on a voluntary basis. They shall be organized by the director of the school (kindergarten) upon a written request of parents or legal guardians of children. In case of teenagers from secondary schools, the declarations expressing their wish to participate in native language instruction at school may be made by students themselves". Section 12 reads "The educational process at schools for national minorities as well as the instruction in the field of the arts shall promote respect for the world cultural heritage and the maintenance of regional traditions and culture".

74. In Poland, 18,795 persons learn their native language in 289 Polish institutions (schools and inter-school groups). To this aim 391 teachers have been employed. Native language instruction is being conducted for the Belorusian, Lithuanian, Ukrainian, Slovak and German minorities. Other data have been illustrated in the table below:

Languages	Institutions	Students	Teachers
Belorusian	53	4 085	83
Lithuanian	16	793	25
Ukrainian	86	2 491	105
German	115	10 587	150
Slovak	16	561	23

75. The objectives of the Charter of the United Nations, the Universal Declaration of Human Rights, and the United Nations Declaration and the Convention on the Elimination of All Forms of Racial Discrimination have found their place in the programming fundamentals which are currently being drawn up in the Ministry of National Education and which will specify the canon of general education, i.e. the knowledge and the skills emanating from academic scientific disciplines as well as the issues which would prepare students for proper functioning in a responsible way in a comtemporary democratic society. The programming fundamentals will constitute the only document formulated by the Minister of National Education which will specify the objectives for public schools and for the schools which have public status. They respect the obligations of the State which arise from the international legal acts.

76. Religious instruction for different denominations in public schools has already been discussed together with the remarks on the freedom of conscience and religion (art. 5 of the Convention).

2. Culture

77. The role of cultural associations of national minorities and inter-religious organizations has already been discussed in the comments on article 2 of the Convention.

3. Information

78. The data on the promotion of human rights in Poland have already been provided in the general part of this report.

79. The media play an important role in the dialogue with national minorities. Pursuant to the Act on Radio and Television of 29 December 1992 (Dz. U. of 1993 No. 7, item 34 with later amendments) the objectives of public radio and television include "taking into account the needs of national and ethnic minorities". Public Television - Programme I broadcasts every two weeks a half-hour programme devoted in turn to consecutive minorities and entitled "In our home". On the all-Poland radio, the theme of national minorities is presented first of all in news bulletins and as a subject matter of commentary and reportage broadcasts. In 1995 "Polish Radio" S.A. took part in the international contest under the banner "Tolerance against Racism and Xenophobia" organized by the Czech radio.

80. Individual national minorities have been guaranteed access to the radio, especially on the local level; they also publish their own periodicals.

81. The Belorusians publish three magazines and a student newspaper. In the "Orthodox Church Review" there is a supplement in the Belorusian language. Radio "Białystok" broadcasts radio programmes (15 minutes) in the Belorusian language every day except Saturdays; on Sundays and Fridays the broadcast lasts 30 minutes. The same radio also broadcasts programmes in the Lithuanian and Ukrainian language (three times a week). The Lithuanians publish a bimonthly and a magazine on Lithuania and the Lithuanian minority in the Polish language. A local TV programme "Television Courier" (Suwałki-Mazury regional edition) broadcasts every day a programme in the Lithuanian language.

82. The Ukrainian minority publishes 10 magazines in the territory of the whole country (including two which are devoted to the Orthodox Church religion, one for young people, one bilingual Ukrainian-Polish). Besides, a supplement in the Ukrainian language is published along with the "Ukrainian Review". Apart from the above-mentioned "Radio Białystok", also Radio "Olsztyn", "Elbląg", "Rzeszów" and "Szczecin" broadcast programmes in the Ukrainian language, mostly once a week.

83. The Gypsies publish one monthly, the Łemks three magazines, the Armenians one bulletin, the Polish Tartars a yearly publication, the Czechs and Slovaks one monthly.

84. The Jewish minority publishes three magazines (including one in the Polish language for young people). The vigorous E.R. Kamińska State Jewish Theatre in Warsaw is the centre of the Jewish culture.

85. The Germans publish 13 different magazines, bulletins and brochures, some of them bilingual. On Radio "Katowice" they broadcast once a week a one-hour programme of the Germany minority, in Radio Opole once a week the programme "Our Homeland", and Television Katowice broadcasts every two weeks a half-hour programme in the German language.

86. The essential role of radio programmes for churches and religious minorities has already been discussed in the comments on article 5 of the Convention.

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OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Fourteenth periodic reports of States parties due in 1996

Addendum

ARGENTINA*

[23 January 1997]

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* This document contains the eleventh, twelfth, thirteenth and fourteenth periodic reports due on 4 January 1990, 1992, 1994 and 1996. For the tenth periodic report of Argentina and the summary records of the meetings of the Committee at which the report was considered, see documents CERD/C/172/Add.18 and CERD/C/SR.892 and 894.

The information submitted by Argentina in accordance with the guidelines laid down for the initial part of the reports of States parties is contained in the core document HRI/CORE/1/Add.74.

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Information concerning articles 2 to 7 of the Convention

Article 2

1. The obligation undertaken by the Argentine Republic under this article to pursue a policy of eliminating racial discrimination in all its forms and promoting understanding among all races flows from the basic texts of the Republic and from national legislation.

2. The Argentine Republic's legal system is made up of laws which have different levels of precedence and cover different areas, all of which are in keeping with the guidelines set out in the Constitution of 1853/1860, with the amendments in force since 24 August 1994. As shown by articles 31, 27 and 75, paragraph 22, of the Constitution, the order of precedence is as follows:

(a) national Constitution;

(b) international human rights instruments of equal standing with the Constitution;

(c) other international treaties;

(d) domestic law;

(e) provincial law, including the provincial constitutions.

3. This order of precedence substantially modifies the order in force up to 24 August 1994, as from, when, under article 75, paragraph 22, of the Constitution, a set of international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, were ranked equally with the Constitution.

4. With specific reference to questions of discrimination, it may be noted that all human rights protected by the legal system in force in the Argentine Republic are intended to be exercised and enjoyed by all its "inhabitants". As the Supreme Court of Justice has made clear, the term "inhabitant" includes both nationals and foreigners and refers to persons who reside in the national territory with the intention of remaining there or who live there without having a domicile with full legal effects (Judgements 151:211).

5. Article 16 of the Constitution of 1853/1860, amended in 1994, provides that the Argentine Nation does not admit prerogatives of blood or birth; there are no personal privileges or titles of nobility. All its inhabitants are equal before the law and are admissible for employment without any requisite other than their suitability. Taxation and the public burden are based on equality; although the terminology is that of a hundred years ago, it substantially corresponds to the terms of article 24 of the American Convention on Human Rights and article 26 of the International Covenant on Civil and Political Rights, as well as the corresponding provisions of the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man, all of which also have constitutional status.

6. Any instance of discrimination is thus a flagrant breach of the Constitution, the international human rights treaties with constitutional status and the additional legislation.

7. The law of the Argentine Republic enshrines in the Constitution the equality of the civil rights of nationals and foreigners. Article 20 of the Constitution thus states that in the territory of the Republic foreigners enjoy all the civil rights of a citizen; they may engage in their industry, trade or profession; they may own real estate, purchase it and dispose of it; they may navigate on the rivers and along the coasts; they may freely practise their form of worship; they may make wills and marry in accordance with the law. They are not obliged to take citizenship or to pay obligatory supplementary taxes. (...)

8. According to the interpretation of these laws by the Supreme Court of Justice, the guarantee of equality before the law resides in ensuring equal legal treatment to persons in reasonably equal circumstances; this guarantee does not prevent the lawmaker from taking different approaches to situations that differ in his opinion, in that such distinctions are not expressed on the basis of arbitrary criteria, inappropriate favour or disfavour, personal privilege or inferiority, class, or unlawful persecution.

9. As part of this legal context, Act No. 24.382, adopted on 5 October and promulgated on 26 October 1994, instituted 17 March of each year as International Day for the Elimination of Discrimination. The decision to commemorate non-discrimination annually falls within the context of the task of elimination referred to in paragraph 15 of the Vienna Declaration and Programme of Action and within the context of the United Nations Decade for Human Rights Education, adopted by the United Nations General Assembly in resolution 48/127.

10. In the same context and in support of the campaign against discrimination, on 5 July 1995, Congress adopted Act No. 242.515, which was promulgated on 28 July of the same year and established the National Institute to Combat Discrimination, Xenophobia and Racism (INADI), as a decentralized body within the Ministry of the Interior. Its purpose is to develop national policies and practical measures to combat discrimination, xenophobia and racism and encourage and carry out initiatives to that end.

11. It should be noted that under Decree No. 232/92 any reservation for reasons of State which may have applied to documents concerning Nazi criminals was declared null and void, and national organizations possessing such documents were ordered to make them available to the General Archives of the Nation within 30 days.

12. An important fact in this connection is that the Argentine Republic has on two occasions since 1991, agreed to the extradition of criminals accused of committing crimes against humanity during the Second World War, with the extradition of Josef Franz Leo Schwamberger to the Federal Republic of Germany in 1991 and of Erich Priebke to the Republic of Italy in 1994.

13. Important progress was made in the context of the 1994 reform of the Constitution, and with reference to the matter under discussion:

(a) Recognition of the indigenous communities as legal entities (art. 75, para. 17);

(b) Constitutional status for the existing remedy of amparo, with the additional provision that it will be applicable to any form of discrimination (art. 43);

(c) Principle whereby the education organization and basic education acts must respect provincial characteristics and equality of opportunity without discrimination, and protect cultural identities and diversity (art. 75, para. 19);

(d) Mandate of the legislature to pass and promote measures for positive action guaranteeing equality of opportunity and treatment and the full enjoyment and exercise of the rights recognized by the Constitution and by international human rights treaties in force, particularly with reference to children, women, the aged and the handicapped (art. 75, para. 23).

Indigenous populations

14. The reform of the Constitution became an event of particular relevance for indigenous populations. These sectors participated to a considerable extent in drafting Act No. 24.309 which proclaimed the need for reform. This proved indispensable in the process of making the indigenous question "visible" and changing the existing situation.

15. In the Declaration which the indigenous populations submitted in October 1993, they asserted that they were the representatives of the Kolla, Tapiete, Wichi, Pilagá, Toba, Mocoví, Mapuche, Chané and Chiriguano peoples, desirous of claiming, as early peoples who had always inhabited Argentina, along with their rights, the recognition of Argentina as a multiethnic and multicultural country.

16. The result of this first move was a statement in the Need for Reform Act (art. 3, para. LL) to the effect that the amendment of the Constitution was necessary in order to guarantee the ethnic and cultural identity of the indigenous peoples. This led to the amendment of the 1853 text, according to which Congress had the power "To provide for the security of the frontiers; to maintain peaceful relations with the Indians, and to promote their conversion to Catholicism".

17. The task of the National Constituent Convention was set out in the text of the present article 75, paragraph 17:

"Congress shall: ...

Recognize the ethnic and cultural prior existence of the indigenous peoples of Argentina;

Guarantee respect for identity and the right to a bilingual and cross-cultural education; recognize the legal personality of the communities and the possession and common ownership of the lands traditionally occupied by them; make arrangements for giving them more land suitable and sufficient for human development; none of this land shall be alienable, transferable or subject to lien or distraint;

Ensure their participation in the management of their natural resources and other matters concerning them. The provinces shall be entitled to exercise these powers concurrently."

18. It may be noted that, in addition to the list of the main indigenous rights, the existence of the indigenous peoples prior to the formation of the Argentine State and its provinces has been expressly recognized; this is an important argument in the campaign of the indigenous peoples for legal personality.

19. This reform of the Constitution provides a new framework for Act No. 23,302, on Indigenous Policy and Assistance to Indigenous Communities and the relevant provincial legislation. The following may be recalled here: the Comprehensive Indigenous Act No. 426 of Formosa Province, of October 1984, which provides for the establishment of the Indigenous Communities' Institute; Act No. 6373 of Salta Province, 1986, on Indigenous Promotion and Development; Act No. 3258 of 1987 on the Improvement of the Living Conditions of the Indigenous Communities and the establishment of the Chaco Indigenous Institute; and the provincial acts of Misiones, Río Negro, Chubut and Santa Fe Provinces.

20. Estimate of indigenous populations in the Argentine Republic, according to data obtained by the National Institute of Indigenous Affairs (INAI) from various sources, are as follows:

PROVINCES	ETHNIC GROUP	POPULATION
Formosa	Pilagá	5 000
Santa Fe and Chaco	Mocoví - Toba	7 300
Chaco, Salta and Formosa	Wichi	60 000
Salta	Chorote	835
Salta	Chulupi	1 165
Misiones	Guaraní	2 900
Salta and Jujuy	Chiriguano	21 000
Salta	Tapiete	500
Salta	Chané	1 400
Neuquén, Río Negro, La Pampa, Chubut, Buenos Aires	Mapuche	40 000
Chubut, Santa Cruz and Tierra del Fuego	Tehuelche	1 000
Tucumán, Santiago del Estero and La Rioja	Diaguitas, Calchaquíes, Quilmes	6 000
Jujuy, Salta	Kolla	170 000
Tierra del Fuego	Ona	500
ESTIMATED TOTAL		376 500

21. INAI's educational activities are basically directed at promoting bilingual and cross-cultural education and scholarships for indigenous students in the formal education system, including further education, restoring traditions and customs along with medical and herbal knowledge - in short, the history of the indigenous communities. In this context, services are provided in the form of financial support - reimbursable or not depending on the situation of each community - for implementing projects to improve the quality of life of the communities by means of micro-enterprises, community and housing improvements, infrastructure, communications and community facilities, market gardens and family farms and rural enterprises.

22. Where the ambient culture is concerned, action is directed at spreading knowledge of the situation of the indigenous populations in Argentina, especially at the secondary education level.

23. As regards training, as from 1995, workshops have been held for indigenous community leaders in coordination with the National Programme for Community Leaders, to give the indigenous population the means to formulate their own projects and be directly involved in their conception, presentation and follow-up. Training courses for 120 fellowship students from nine provinces have been held in the north-west, north-east and Patagonia.

24. INAI is for its part involved in the following activities: ethno-linguistic surveys, recording of memories, formal and informal education and educational assistance. For example, INAI supports Wichi families in the municipality of El Sauzalito which, in addition to its main centre of El Sauzalito, includes a number of localities which are part of the Chaco sector of the geographical region known as El Impenetrable, an area of approximately 5,240 km^2 with a stable population of 800 families.

25. The following projects have been carried out in this area:

(a) "Comprehensive rural development programme of the area between the Teuco and Bermejito Rivers".

First stage: 73 projects concerning agriculture, water supply, bee-keeping, spinning, goat-breeding, dressmaking, food production and brickworks; the programme also includes 20 training courses to support these undertakings. There are 312 families which benefit;

(b) "El Sauzalito Wichi Cultural Development:" this project is intended to save and revitalize the cultural potential of the Wichi families by reinforcing their identity and self-esteem as a basis for other activities to improve the quality of life of this group. One hundred and fifty indigenous families are involved;

(c) "Land measurement," for the purpose of obtaining community ownership of a total area of 18,814 hectares occupied by the Wichi as a reservation, as designated by the Chaco provincial government. The beneficiaries are 296 indigenous families;

(d) "Graphic arts course:" this is offered in the context of the graphic arts workshop which directly benefits three Wichi families, but will also allow new reading material to be published in the indigenous language;

(e) "Application for a subsidy for the Taiñi Cultural Association": this Association is based in El Sauzalito and is run by the Wichi. The requested financial assistance is intended to cover expenses linked to cultural promotion activities which the Association carries out in the Wichi indigenous community;

(f) "Preparation of teaching materials for Wichi language literacy courses": it is planned to publish 3,000 copies of a book called Chalanero in Spanish and Tsalanawu in Wichi in order to teach local Wichi children to read. It includes a common alphabet for the two languages since the indigenous language is oral. Although the project is located in El Sauzalito, its social impact will reach all the Wichi population in the area concerned;

(g) Community Agriculture Programme: in November 1994, an indigenous subprogramme of this Ministry of Agriculture and Fisheries project was set up in Formosa Province; it operates through a provincial technical coordination unit, comprising the Ministry, the Institute of Indigenous Communities and work teams comprising members of the indigenous community and NGOs; channels of indigenous participation have been defined in area terms for the Wichi and the Toba and in ethnic terms for the Pilagá;

(h) Indigenous Peoples' Health Programme (Ministry of Health and Social Welfare): in view of the serious situation caused by outbreaks of cholera in northern Argentina, a programme was set up to improve primary health care in indigenous communities by reviving their culture in the cholera stricken areas; it involves the provision of equipment and the training of 250 indigenous health workers in five provinces.

On the basis of the above, the Indigenous Peoples' Health Programme was established in 1995, with a coverage of 40,000 persons. The programme has 250 indigenous health workers recruited under agreements with the Ministry of Labour and a national interdisciplinary team with indigenous representatives and coordinates with the programmes of the Mother and Child Health Directorate.

26. The National Institute of Indigenous Affairs, with assistance from the land authorities and the National Register of Indigenous Communities, is working for the transfer of estate land to the indigenous communities which have traditionally occupied it, and provide them with the necessary know-how to make the best use of it. For example, INAI, in cooperation with the provincial governments, is in the process of regularizing the ownership of land traditionally occupied by the indigenous communities, and providing the latter with technical and financial support. At present, two estates in Salta Province, with a total area of 145,000 hectares, are being expropriated, and regularization is taking place in the provinces of Formosa, Salta, Chaco, Chubut, Neuquén, Misiones and Tierra del Fuego.

27. A good example of what has been achieved to date is the recent distribution of land ownership deeds in Formosa province to all the indigenous

communities living on that land, which is estimated at more than 400,000 hectares. Similar measures are being taken in other provinces.

28. For further information on the activities of the Institute for Indigenous Affairs, see annex 1.*

Immigrants

29. In addition to the measures mentioned earlier, the Argentine Republic has adopted others to encourage foreigners to settle in the country and make it easier for them to do so. Decree No. 1033/92 established emergency arrangements - thus subject to time restrictions - so as to legalize the situation of nationals of neighbouring countries, established de facto - although not legally - in the Argentine Republic on 30 December 1991. These foreign citizens were able to become fully established, with all the accompanying advantages.

30. The emergency legislation mentioned above has permitted approximately 250,000 persons to legalize their situation, including Bolivians, Brazilians, Chileans, Paraguayans and Uruguayans.

31. At present, the immigration law in force is to be found in Decree No. 1023/94 and its 12 statutory provisions. The emergency regime has therefore become null and void, and guidelines have now been established for granting permanent or temporary residence in the Argentine Republic.

32. With specific reference to the estimated 500,000 Bolivian nationals living illegally in the Argentine Republic, the Presidents of Argentina and Bolivia agreed on a 120-day deadline as from 19 November 1996 for the completion of negotiations on the subject. The purpose of the negotiations is to arrive at an agreement on migration between the two countries on the basis of principles of shared responsibility, job-creation norms, integration of frontier areas and incorporation of immigrants in each country through labour, social and cultural integration plans. The aim of this agreement will be to simplify existing red-tape, integrate these citizens into the registered labour market and facilitate their access to basic services without discrimination.

Refugees

33. The largest group of refugees in the Argentine Republic was of Lao nationals who settled between 1979 and 1980 under the relevant UNHCR programme. A large number of families in this group have applied for voluntary repatriation since they have been unable to adjust to local customs and to being so far from their homeland. Lack of financial resources has made it impossible to comply with their wishes.

34. With the return of democracy in 1983, Argentina fully honoured its international commitments with regard to refugees. It lifted the time-related and geographical restrictions of the convention and, under Decree No. 464 of

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* Can be consulted in the archives of the Centre for Human Rights.

1985, established the Refugee Eligibility Committee (CEPARE) within the Ministry of the Interior (National Directorate of Migrations), a government body responsible for processing applications submitted by foreign asylum-seekers. UNHCR is a member of the Committee.

35. The consolidation of UNHCR's objectives in the Argentine Republic strengthens democracy and the rule of law, the two pillars of any continued efforts to establish an environment of humanity and solidarity in this turbulent end to the millenium.

Article 3

36. Apartheid is not practised in the Argentine Republic. The Government openly condemns all forms of apartheid or any other form of racial segregation and will not tolerate it in any of its manifestations. Since 6 December 1985, the International Convention on the Suppression and Punishment of the Crime of Apartheid has been in force and has contributed with the efforts of the international community as a whole, to achieving the total eradication of apartheid in all its States parties.

Article 4

37. The opinions of extremist or racist organizations are repellent to the Government of the Argentine Republic. While the activities of such groups or their members are in breach of the law on the grounds of their ideologies, there are specific laws dealing with criminal behaviour. In particular, Act No. 23,592 of 21 August 1988 increases the penalties set out in the Penal Code "when the offence committed concerns the persecution or hatred of a race, religion or nationality, or is intended to destroy wholly or in part a national, ethnic, racial or religious group".

38. Two recent cases have illustrated the validity and the application of all the anti-discrimination legislation mentioned, namely, Ekmekdjian v. Sofovich (1992) and DAIA v. Bonavota (1996), with particular reference to the question of procedural right to act as complainant, which was accepted in both judicial decisions, although the injured party was a member of a religious community and not the direct target of the offence, which was the community as a whole.

39. Where the principle of equality is concerned, in the second of the judgements cited, the National Judge of First Instance for Federal Criminal and Correctional Cases, Dr. Gabriel Cavallo, said, "The constitutional guarantee of equality, expressed as equality before the law, implies a statement that our nation admits no prerogatives or differentiation in respect of any person or group of persons. In positive terms, it means that laws which admit of a state of affairs incompatible with that principle will not be acceptable, and in negative terms it means that acts which, although not sanctioned by any legislation in fact imply that state of affairs, must not be tolerated.".

40. The federal judge, Claudio Bonadio, after receiving a complaint, in early December 1996, tried former General Carlos Guillermo Suarez Mason who was charged with the offence of "incitement to racial or religious hatred"

following statements made to and published by the local press against the Jewish community. The judge based his decision on the violation of article 3 of the anti-discrimination act mentioned above (23,592) and recalled that although the Constitution defends the freedom to express ideas, it should not be taken as a licence to "protect" offences and infringe the rights of third persons.

Article 5

41. None of the rights set out in article 5 of the Convention are subject to any restrictions on grounds of race, colour or ethnic or national origin, except for the right to vote, which, as in other countries, is subject to certain restrictions based on nationality.

42. The policy of the Argentine Government is to promote the full and equal enjoyment of human rights and fundamental freedoms by all the country's inhabitants. It may be noted that, following the reform of the Constitution in 1994, membership of the Apostolic Roman Catholic faith is no longer a requirement for becoming President of the Republic, as it was in the 1853/1860 Constitution, while the members of religious communities of some consequence in the country are entitled to (or will be soon) paid religious holidays, as is the case for members of the Jewish community under Act No. 24,571; for members of the Muslim community, a bill currently before Congress has been provisionally approved pending final passage.

43. Non-discrimination is a principle which pervades human rights law. The very notion of human rights comprises notions of equality, with non-discrimination as the corollary. As has been said, this obligation is enshrined in the legislation in force in the Argentine Republic.

44. From what has been said about article 2 of the Convention, together with the foregoing, it can be seen that in the Argentine Republic no distinction is made on grounds of race as far as the enjoyment and exercise of the rights set out in article 5 is concerned. The reports that the Argentine Republic has submitted to the Human Rights Committee corroborate this (CCPR/C/45/Add.2).

Article 6

Remedy of amparo

45. In addition to the remedies referred to in Part I, with reference to the substance of this report, it may be noted that the Constitution in force since 24 August 1994 introduced the practice of filing for amparo against any form of discrimination.

Act No. 23,592 concerning discriminatory acts

46. This Act remains in force and provides for civil proceedings to be brought, at the request of the interested party, against any person who arbitrarily harms, restricts or in any way impairs the full exercise, on an equal footing, of fundamental rights and guarantees, in particular, discriminatory acts or omissions motivated, inter alia, by considerations of race, religion, nationality, ideology, political or trade union opinion, sex,

financial situation, social status or physical characteristics. In such cases, the perpetrator of the act shall be required to cancel the discriminatory act or cease to perform it and to repair the moral and material damage caused. Case law demonstrates the validity and full implementation of the above Act.

Complaints to the National Technical and Prevention Directorate of the Office of the Under-Secretary for Human and Social Rights of the Ministry of the Interior

47. The Directorate receives approximately 50 complaints and requests for advice every month. The requests are forwarded to the various areas of Government, depending on the subject matter. Complaints concerning the commission of an unlawful act are submitted to the judicial authorities. If the complaint involves a public official, it is also submitted to the relevant administrative body so that an administrative inquiry can be carried out.

Complaints to the National Institute to Combat Discrimination, Xenophobia and Racism

48. On 27 June 1994, the Ministry of the Interior issued a resolution entrusting the Office of the Secretary for the Interior and the Office of the Under-Secretary for Community Relations with drafting a bill for the establishment of this Institute (see annex III).

49. The Act establishing the Institute gives it powers to receive, collate and investigate complaints of discriminatory, xenophobic or racist behaviour, and provide advisory services for victims and free legal support.

50. In view of the short time since its establishment and the start of its activities, it is impossible for the time being to report on the results obtained so far.

Complaints to the National Anti-Discrimination Programme, Office of the Secretary for Community Relations, Ministry of the Interior

51. This body is not empowered to take official action, which means that it is essential that the presumed injured party should submit a formal complaint.

Article 7

Teaching and education

52. Act No. 23,302, which refers specifically to education in the indigenous communities, states in article 14 that school syllabuses must preserve and revitalize the historical and cultural identity of those communities and ensure that their members are integrated into national society on a basis of equality.

National Institute to Combat Discrimination, Xenophobia and Racism

53. This Institute, established in 1995 as already explained, has the following functions:

(a) Prevention/dissemination: disseminating the principles and legal standards relating to non-discrimination and informing public opinion;

(b) Education: planning and promoting education campaigns;

(c) Investigation;

(d) Services;

(e) Documentation;

(f) Cooperation.

National Anti-Discrimination Programme

54. The Minister of the Interior approved the National Anti-Discrimination Programme (1993) in resolution No. 142; its raison d'être is to draw attention to the problem of discrimination in order to develop public understanding of the situation of those who experience it and help to transform the discriminatory aspects of our society. Its aim is to support fixed-term programmes through the non-governmental organizations dealing with discrimination; it is also concerned with popular education and with urgent measures intended to provide an immediate response to an act of discrimination and to the particular circumstances of the persons who are the object of the discrimination (see annex II). In this connection, an interdisciplinary seminar on "Approaches to discrimination" was held in Buenos Aires on 3 and 4 March 1994.

Office of the Under-Secretary for Human and Social Rights (Ministry of the Interior)

55. The programme objectives of the National Promotion Directorate of the Office of the Under-Secretary are:

(a) To help to incorporate education for human rights and democracy in all levels of formal education as the basis for a citizens' ethic, guarantee human rights and prevent violations;

(b) To conduct joint informal human rights education programmes with governmental, non-governmental and international agencies;

(c) To train public officials (national and provincial) in the theoretical and practical aspects of human rights, since it is they who are responsible for the implementation of public policies;

(d) To train the police and security forces to work within the rules and principles laid down by the legislation in force and in accordance with the recommendations of the United Nations;

(e) To give impetus to the specialized human rights documentation centre administered by the Directorate;

(f) To promote publications which support the dissemination, theoretical consideration and teaching of human rights.

Curriculum of the Institutes for Training and Improvement of the Federal Prison Service

56. Study programmes in this sphere were updated in accordance with resolution No. 1145/91 of the Ministry of Justice. The discussion workshop programme on the duties of warders, guards and workshop supervisors, for non-commissioned officers of the Federal Prison Service, includes the Universal Declaration of Human Rights and the Code of Conduct for Law Enforcement Officials. The study programme for officers includes a course on "Applied ethics and human rights", the core content of which includes the concept of human rights; categories, conventions, treaties, covenants and declarations; and legal instruments in force (Pact of San José, Costa Rica; Standard Minimum Rules for the Treatment of Prisoners, etc.).

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of all Forms of
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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

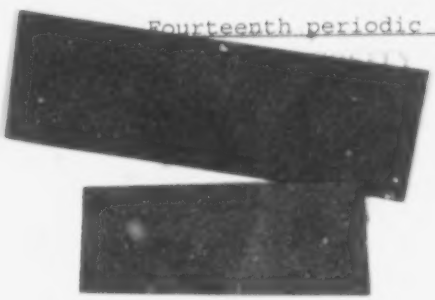
REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Fourteenth periodic report of States parties due in 1996

Addendum

Philippines*

[21 February 1997]



* This document contains the eleventh, twelfth, thirteenth and fourteenth periodic reports (consolidated in one document) due on 5 January 1990, 1992, 1994 and 1996 respectively. For the tenth periodic report of the Philippines and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/172/Add.17 and CERD/C/SR.842-843.

The annexes and reference documentation provided by the Philippines may be consulted by the members of the Committee in the Secretariat's files.

The information submitted by the Philippines in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in the basic document HRI/CORE/1/Add.37.

GE.97-15870 (E)

Introduction

1. The present consolidated report reflects the last 2½ years of the Aquino Administration and the first 3½ years in power of President Fidel V. Ramos who was elected for a six-year term in the May 1992 presidential and congressional elections and who assumed office on 30 June 1992. Since this report is being presented in March 1997, it has also been further updated to include the period up to December 1996.

2. The report deals with the legislative, judicial, administrative and other measures which have been adopted in the Philippines to give effect to the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. The information contained in the report tries to adhere to the revised general guidelines adopted by the Committee on 9 April 1980 and the additional guidelines adopted by the Committee on 17 March 1982, as revised during its forty-second session on 19 March 1993. It also addresses, whenever possible, the questions or concerns raised during examination of the ninth and tenth consolidated report which covered the period from 5 January 1986 to 4 January 1990.

3. It will be recalled that the 1989 consolidated report highlighted the 1987 Philippine Constitution as a human rights-oriented organic law of the land which adequately provides for the promotion and protection of human rights and fundamental freedoms. The present report reiterates the constitutional provisions as well as the various legislative, judicial, administrative and other measures which were cited in the previous report, and aims to provide in greater detail information on any new laws, policies and measures implemented by the Aquino and Ramos governments during the period covered by the report, with regard to the promotion and protection of the human rights and fundamental freedoms of the Filipino people, giving particular emphasis on the question of racial discrimination.

General statement

4. As in the previous reports, the Philippine Government wishes to emphasize that racial discrimination, as defined under paragraph 1, article 1, of the Convention, is alien to the prevailing mores and culture of the Filipino people. The type of racial discrimination, similar to what was practised in South Africa when the policy of apartheid was not yet dismantled, has never officially or factually existed in the Philippines, neither in a systemic nor formal nor intermittent nor isolated manner. Hence, there has never been any references to the existence of a discriminatory policy on racial grounds nor has there been any allegation of instances of racial discrimination as a specific kind of human rights violation in the Philippines, even before or immediately after the Philippines adopted and ratified the Convention on 21 December 1965 and 15 September 1967, respectively.

5. It was also noted in the previous report that racial discrimination has never existed among ancient Filipinos who belong to a single racial stock, the Malays. It was in fact the ideological, cultural and socio-economic legacy of a long history of colonialism that brought about the present differences in the levels of development between the majority of Filipinos and those among

them who tenaciously cleaved to the indigenous Filipino cultural heritage, i.e., the Muslim Filipinos in the south and the indigenous cultural communities in northern and southern Philippines. The previous report concluded that this disparity in development, as well as the prevailing differential access to land, education or employment, resulted in apparent racial distinctions or perceived instances of racial discrimination.

6. The Philippine Government reiterates once again that it supports the Convention and that racial discrimination as defined therein constitutes a grave violation of human rights and fundamental freedoms. It also supports the international consensus on the need to prevent the occurrence of racism, racial discrimination and discriminatory practices or policies on racial grounds wherever and whenever they might occur. To this end it adopted and ratified the Convention and enshrined in its Constitution the obligation to respect, uphold and protect all human rights and fundamental freedoms under a regime of law (art. 2, sect. 11). In addition, it enacted Presidential Decree No. 1350-A of 17 April 1978 which continues to be in effect and which has the primary purpose of implementing the provisions of the Convention in the country and providing for specific penalties for a class of offences constituting violations of the Convention in the Philippines.

7. The Philippine Government therefore maintains in this report that discrimination based on race, colour or ethnic origin is non-existent in the Philippines because Filipinos have essentially the same racial and ethnic origins and because such practice has never been implemented officially nor is it present in an informal form in the country.

8. At the same time, and as with previous reports, this report continues to reflect the importance given by the Constitution and the Philippine Government to the rights and welfare of the indigenous cultural communities (ICCs) and the Muslim Filipinos in the Philippines. The latter part of this report is an update on the legislative, judicial and administrative measures which are being taken by the Philippine Government to implement its commitment to address the special development needs of the Muslim Filipinos and other indigenous cultural communities with whom the majority of Filipinos share the same racial, ethnic and cultural heritage.

I. GENERAL POLITICAL STRUCTURE

9. At the national level, the Philippines has three co-equal branches of government: the Executive, the Legislature and the Judiciary. The local government units are composed of the provinces, cities, municipalities and the barangays.

10. The province consists of a cluster of municipalities, or municipalities and component cities, and as a political and corporate unit of government serves as a dynamic mechanism for the development process and effective governance of local government units within its territorial jurisdiction.

11. The city, consisting of more urbanized and developed barangays, serves as a general-purpose government for the coordination and delivery of basic, regular, and direct services and effective governance of the inhabitants within its territorial jurisdiction.

12. The municipality, consisting of a town centre and a group of barangays, serves primarily as a general-purpose government for the coordination and delivery of basic, regular and direct services and effective governance of the inhabitants within its territorial jurisdiction.

13. The barangay, as the basic political unit in both rural and urban settings, serves as the primary planning and implementing unit of government policies, plans and programmes, projects and activities in the community and as a forum wherein the collective views of the people may be expressed, crystallized and considered and where disputes may be amicably settled. It also serves as a springboard for elevating the people's concerns to a higher level of governance.

II. COMPOSITION OF THE PHILIPPINE POPULATION AS OF THE LATEST CENSUS (1990)

14. The 1990 population census of the Philippines showed a total of 60,560,000, with the Filipinos numbering 60,420,000. The rest, numbering 134,211 persons (.02 per cent of the total), were foreign nationals made up mostly of Chinese (44 per cent of the total number of foreign population), Americans (14.5 per cent), British (5 per cent), Indonesians (3 per cent), Japanese (2.3 per cent) and Indians (2 per cent). The total number of Muslim Filipinos during the 1990 census was 2,757,020 (4.56 per cent of the total number of Filipinos). According to a survey conducted by the Office of Muslim Affairs, Muslim Filipinos numbered 6.6 million as of 1992.

15. It is noted at this point that the respective offices responsible for the northern and southern indigenous cultural communities (Office for Northern Cultural Communities and Office for Southern Cultural Communities) presented only estimates as to the total number of population who belong to the ICCs. Based on its informal survey, the ONCC listed, as of 1992, a total of 3,615,581 people belonging to the northern cultural communities. During the Global Indigenous Cultural Olympics and Summit (GICOS) held in Manila in 1996, an attempt was made by both the ONCC and the OSCC to list or estimate the total number of people from the northern and southern cultural communities. (See annex I, containing statistical tables from the 1990 census on the composition of the population in the Philippines and on the Muslim Filipinos, the estimates on the composition of the indigenous cultural communities, and a brief description of each of the different tribes that compose the cultural communities located in the northern and southern regions of the Philippines; available for consultation with the Secretariat).

III. CONSTITUTIONAL PROVISIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

16. The 1987 Philippine Constitution declared as a policy that the "State values the dignity of every human person and guarantees full respect for human rights" (art. 2, sect. 11). It is also the national policy to protect the right to health of the people (art. 2, sect. 15) as well as their right to a balanced and healthful ecology (art. 2, sect. 16). The State is mandated to protect the rights of workers and promote their welfare (art. 2, sect. 18) and to guarantee equal access to opportunities for public service (art. 2, sect. 26).

17. Everyone's right to equality before the law in the enjoyment of civil, political and social rights is enshrined in the all-embracing Bill of Rights of the 1987 Constitution (art. 3). To strengthen the Governments concern for the protection and promotion of human rights and fundamental freedoms, the Constitution also mandates the Congress of the Philippines to give the "highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities and remove cultural inequities by equitably diffusing wealth and political power for the common good" (art. 13, sect. 1). The "promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance" (art. 13, sect. 2).

18. For the first time, the State declared as a national policy that it "recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development" (art. 2, sect. 22). Subject to the provisions of the 1987 Constitution, the State is also mandated to "protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being" (art. 12, sect. 5). The same provision states that "Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain". The State shall also "recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and inst.tutions" and "shall consider these rights in the formulation of national plans and policies" (art. 14, sect. 17). Furthermore, the Constitution mandated the creation of "autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines" (art. 10, sects. 15-21).

19. It is emphasized that this special attention given to the indigenous cultural communities should not be taken as an indication that they are treated separately from the rest of the population; rather it is intended to ensure that their cultural identity and interests are acknowledged and that as Filipinos, they are drawn within the protective mantle of the fundamental law of the land.

20. Finally, the Constitution provided for the creation of the Commission on Human Rights (art. 13, sect. 17), which was implemented by the Aquino administration. The Commission is an independent body which is mandated by the Constitution to investigate on its own or on complaint by any party, all forms of human rights violations, including those involving civil and political rights. The Commission is also responsible for the provision of appropriate legal measures for the protection of the human rights of all persons within the Philippines, as well as Filipinos living abroad, and for the provision of preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection.

IV. REVIEW OF INFORMATION ON ARTICLES 2-7 OF THE CONVENTION

A. Article 2

21. The Philippines reiterates the various information under this item which was already given in the previous reports. In particular, it has been pointed out that the Philippines' constitutional and legal system, its adherence to the democratic way of life and government and its commitment to the promotion and protection of human rights and fundamental freedoms provide the framework for the condemnation and prohibition of racial discrimination against persons, groups of persons or institutions by public authorities and institutions, both at the national and the local level.

B. Article 3

22. The Philippines reaffirms its adherence to the Charter of the United Nations which has, as one of its basic principles, the promotion of human rights and fundamental freedoms for all without distinction as to race, colour, sex, language or religion. This principle is considered a vital element for the achievement of growth and development and for the maintenance of peace and security. Racism and all forms of racial discrimination are an affront to the dignity of man and should be eradicated.

23. The Philippines actively supported and participated in the efforts of the international community in bringing to an end apartheid in South Africa. Together with other nations, the Philippines welcomed the establishment of a united, non-racial and democratic government in South Africa and joined other nations in congratulating all South Africans and their leaders in bringing about an end to racial segregation and in laying the foundations for a new South Africa whose citizens can now enjoy equal and guaranteed rights for everyone. The Philippines witnessed with satisfaction the entry into force of South Africa's new Constitution on 27 April 1994, the holding of democratic elections from 26-29 April 1994, the convening of South Africa's new Parliament on 5 May 1994 and the installation on 10 May 1994 of its President and Government of National Unity.

24. The Philippines is also happy to note that apartheid as defined by the International Convention on the Suppression and Punishment of the Crime of Apartheid no longer exists anywhere. As proof of its commitment to fight any occurrence or resurgence of the form of apartheid such as that which was practised in South Africa, the Philippines ratified, aside from the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid on 26 January 1978 and the International Convention against Apartheid in Sports on 22 July 1987.

C. Article 4

25. As stated in the previous reports, Presidential Decree No. 1350-A, promulgated on 17 April 1978, declared violations of the Convention on the Elimination of All Forms of Racial Discrimination as unlawful and provided appropriate penalties for such violations. As of the date of this report, there have been no reported cases of violations of the decree nor has any

person, group or organization, whether public or private, been accused of committing racial discrimination or has disseminated propaganda based on ideas or theories of racial superiority in the country. It is also reiterated that PD1350-A remains valid and effective since it is consistent with the Philippines' initiatives in the field of human rights.

D. Article 5

26. The Philippines reiterates the information under this item which was given during the previous report(s). In particular, the consolidated ninth and tenth report enumerated in detail the provisions of the 1987 Constitution which enshrined the civil, political and economic, social and cultural rights of every Filipino. These rights are guaranteed without distinction as to race, colour or ethnic origin.

E. Article 6

27. The Philippines reiterates the information under this item which was given during the previous reports, and in particular the following:

(a) Equal protection of the law and the concept of due process are enshrined in article 3, section 1, of the 1987 Constitution which states that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws". This constitutional provision ensures that all persons have access or recourse to the law and have the right to be heard with impartiality before appropriate tribunals or bodies and to seek just and adequate reparation or compensation;

(b) Aside from the avenue provided by a legal proceeding, allegations of human rights violation can also be brought before the Commission on Human Rights which is empowered to investigate, on its own or upon the complaint of any party, all forms of human rights violation involving civil and political rights.

F. Article 7

28. The Philippines reiterates the information under this item which was given during the previous reports, and in particular the following:

(a) The 1987 Constitution mandates all educational institutions to "inculcate patriotism and nationalism, foster love of humanity, respect for human rights. ..." (art. 14, sect. 3 (2));

(b) Executive Order No. 27 issued on 4 July 1986 entitled "Education to maximize respect for human rights" instructed the Department of Education, Culture and Sports (DECS) to include the study and understanding of human rights in the curricula of all levels of education and training in all schools and to initiate and maintain regular programmes and special projects to provide venues for information and discussion of human rights, including utilization of informal education and other means to stress respect for human rights. In accordance with this Order the DECS issued Order No. 61 on 9 June 1987 requiring the inclusion of the study of human rights and accompanying responsibilities in the school curricula at all levels;

(c) In 1994, in coordination with the Office of the Presidential Adviser on the Peace Process, DECS conducted a "writeshop" on Peace Education modules, in which participated writers who were members of the indigenous cultural communities. The modules included lessons on how tolerance and respect for other beliefs and customs can lead to understanding and harmony not only among the different indigenous cultural communities but also between them and the other members of Filipino society. These modules have been field tested in the different regions and received favourable comments from the cultural communities. Final copies were being reproduced for distribution and implementation in the school year 1997/98;

(d) In 1995/96, DECS, in coordination with the Commission on Human Rights, conducted three batches of nationwide training programmes for supervisors on basic human rights which included a study of the concepts of elimination of racial discrimination and cooperation and unity among the indigenous cultural community tribes. These supervisors are expected to conduct echo seminars for principals and teachers on how to use the concepts in the classroom. They also have the responsibility of monitoring the implementation of the above-mentioned DECS Order;

(e) The DECS Values Education National Framework includes the core values of tolerance and global solidarity, which when translated into practice includes the prevention of racial discrimination;

(f) The Philippines also continues to celebrate every 10 December Human Rights Day which is marked by symposia or conferences aimed at increasing awareness and respect for human rights and fundamental freedoms.

V. UPDATE ON MEASURES TO PROMOTE THE INTERESTS AND WELFARE OF THE INDIGENOUS CULTURAL COMMUNITIES AND MUSLIM FILIPINOS IN THE PHILIPPINES

A. The Indigenous Cultural Communities in northern and southern Philippines

29. In the Philippines, the term indigenous cultural communities (ICCs) refer to a "homogenous society, identified by self-ascription or by others, who have continuously lived as a community on community-bounded and defined territory, sharing communal bonds of language, traditions, and other distinctive cultural traits, and who, through resistance to the political, social and cultural inroads of colonization, became historically differentiated from the majority of the Filipinos". The term likewise refers to people who are regarded as indigenous on account of their descent from populations which inhabited the country at the time of conquest or colonization or the establishment of present State boundaries and who retained some or all of their own social, economic, cultural and political institutions, and who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.

30. The major areas of concern for the ICCs continue to be centred on poverty, opportunities for livelihood, education and vocational and employment skills, basic services and infrastructure, and peace, harmony and stability in the community. The Government's concern for ICCs is embodied in the Social Reform Agenda (SRA) of the Ramos administration which is a package of

interventions by the Government under the Medium-Term Philippine Development Plan (1993-1998) aimed at ensuring the welfare of the disadvantaged groups in the society through the alleviation of poverty and the attainment of social justice, equity and a lasting peace.

31. Projects and measures in support of the SRA for the socio-economic development of the cultural communities in the north focused on livelihood/income-generating and infrastructure projects, promotion of political stability and the pursuance of ancestral land/domain claims, social services (basic health care and proper nutrition), human development/people empowerment through the provision of educational assistance, environmental protection and cultural development. (See annex II - Accomplishment Report of the Office for Northern Cultural Communities for 1996 and information on the functions of the Office.)

32. The SRA also renewed with vigour the implementation of flagship programmes for the benefit of the southern cultural communities which focused on the following priority areas: ancestral domain/land development/advocacy, livelihood development, technology transfer and skills development, social infrastructure, health and sanitation, educational advancement, cultural heritage preservation and enhancement, protection of rights and indigenous institution revitalization. (See annex III - Accomplishment Report of the Office for Southern Cultural Communities for 1996.)

33. The rights and welfare of the children belonging to the ICCs are also given attention. On 24 November 1993, the Department of Justice promulgated "Rules and Regulations on Children of Indigenous Cultural Communities" (annex IV) (pursuant to Republic Act No. 7610, providing for stronger deterrence and protection against child abuse, exploitation and discrimination) which seek to provide children of ICCs with basic health, nutrition and other basic social services to ensure their protection, survival and development consistent with the customs and traditions of their respective communities. Of particular importance is the opportunity given to the child to obtain education or schooling at the elementary and secondary levels, as well as to avail itself of non-formal education to develop practical skills. Consistent with the expressed desire or need of the ICC to preserve its cultural heritage, an alternative system of education shall also be provided, using the dialect of the community as medium of instruction whenever possible.

34. Scholarships granted to deserving youths from the ICCs under the National Integration Study Grant Programme (NISGP) and the Special Ethnic Groups Educational Assistance Programme (SEGEAP) are being administered on behalf of the Department of Education, Culture and Sports (DECS) by the Office of Student Affairs in the University of the Philippines.

35. The Philippine Government, through the Department of Labour and Employment (DOLE), is mandated to protect the rights of workers from both the agricultural and industrial sector. The indigenous cultural communities and the Muslim Filipinos come within the purview of this mandate as rural agricultural workers. Under the Department's policy initiatives, rural workers are given protection and extended other related services, i.e. the grant of legal personality to organize groups for registration under the Bureau of Rural Workers (BRW). DOLE works for the prevention of all forms of

discrimination against all workers particularly with regard to admission to employment, equal remuneration for work of equal value; medical and social assistance, occupational safety and health, especially exposure to radiation, pesticides and other toxic substances, workmen's compensation, employment injury benefits and housing; the right to association and freedom for all lawful trade union activities; and the right to conclude collective agreements with employees' or employers' organizations.

36. Pursuant to section 9, paragraph 4, of Republic Act No. 6040 (Civil Service Act of 1959), the Civil Service Commission (CSC) granted eligibilities to members of cultural communities through special examinations from 1975 to 1980. These examinations did not require the passing of a written test. Eligibilities were granted after evaluating the qualification of each applicant through a review of their experience, training and education as described in their application forms and supported by corroborative evidences. These examinations were given to establish a register of eligibles from which appointment to government positions covered by examinations as required by law can be made.

37. In July 1989, the CSC passed a resolution which aimed at institutionalizing "a long-range mechanism within the government sector to ensure equality of opportunities in employment and terms and conditions of work". CSC resolution 89-463 aimed to adopt appropriate measures, including sanctions, and prohibited all forms of discrimination in employment and employment opportunities in the government service. For purposes of the resolution, the term discrimination was defined as "any distinction, exclusion or preference made on the basis of gender, religious or political affiliation, minority or cultural extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment occupation".

38. In October 1989, special written career professional and sub-professional examinations for members of cultural communities were held in 39 test centres nationwide aimed at giving them equal opportunities for employment in the bureaucracy. No similar examination has been given since then but the CSC has been administering the regular Career Service Examination which is open to members of all cultural communities provided that they are qualified applicants.

39. Several bills are pending in Congress which aim to promote equal employment opportunities for the indigenous cultural communities and the Muslim Filipinos: (a) Senate Bill No. 153 entitled "An act to ensure equal employment opportunities to Muslims and Tribal Filipinos"; (b) Senate Bill No. 212 entitled "An act granting equal employment opportunities in all offices, agencies or branches of Government to members of the cultural communities, allotting at least fifteen per cent (15%) of all positions therein for this purpose, and for other purposes; (c) Senate Bill No. 1057 entitled "An act to ensure equal employment opportunities to members of indigenous cultural communities and preference in certain cases and for other purposes".

40. A long-standing concern of the ICCs, and one which is at the core of their struggle for socio-economic upliftment, is the resolution of their claim to their ancestral domain/lands of which they were dispossessed as a result of years of neglect and exploitation of lands and natural resources. As already stated, the provisions of the 1987 Constitution reflect the recognition and commitment of the State to promote the well-being and development of the ICCs, particularly in relation to the need to protect their ancestral rights (art. 2, sect. 22; art. 12, sect. 5; art. 14, sect. 17). The Constitution provides that "the State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous cultural communities to their ancestral lands (art. 13, sect. 6).

41. The rights of indigenous cultural communities to their ancestral lands are also reflected in the following laws:

(a) Republic Act No. 6657 (Comprehensive Agrarian Reform Law of 1988), section 9:

> "Ancestral lands - For purposes of this Act, ancestral lands of each indigenous cultural community shall include, but not be limited to, lands in the actual, continuous and open possession and occupation of the community and its members. Provided, that the Torrens System shall be respected.
>
> "The rights of these communities to their ancestral lands shall be protected to ensure their economic, social and cultural well-being. In line with the principles of self-determination and autonomy, the systems of ownership, land use, and the modes of settling land disputes of all these communities must be recognized and respected.
>
> "Any provision of law to the contrary notwithstanding, the Presidential Agrarian Reform Council (PARC) may suspend the implementation of this Act with respect to ancestral lands for the purpose of identifying and delineating such lands. Provided, that in the autonomous regions, the respective legislatures may enact their own laws on ancestral domain subject to the provisions of this Constitution and the principles enunciated in this Act and other national laws."

(b) Republic Act No. 7576 (National Integrated Protected Areas System Act of 1992), section 13:

> "Ancestral Lands and Rights Over Them - Ancestral lands and customary rights and interests arising therefrom shall be accorded due recognition. The Department of Environment and Natural Resources (DENR) shall prescribe rules and regulations to govern ancestral lands protected areas: Provided, that the DENR shall have no power to evict indigenous cultural communities from their present occupancy nor

resettle them to another area without their consent. Provided, however, that all rules and regulations, whether adversely affecting said communities or not, shall be subjected to notice and hearing to be participated in by members of concerned indigenous community."

42. Congress is in the process of enacting a law to address the property rights and relations over ancestral domains and is currently considering House Bill No. 33 and Senate Bill No. 1728 (which is a consolidation of several bills with Senate Bill No. 1476 as the basic bill). Senate Bill No. 1476, otherwise known as the Indigenous Cultural Communities/Indigenous People's Rights Act of 1996, is a comprehensive bill which addresses the aspirations of the cultural communities for the recognition specifically of their right to special measures for the immediate, effective and continuing improvement of their economic and social condition including in the areas of employment, education, training, health and social security and their right to special protection and security in periods of armed conflicts. The law also seeks to abolish the Office for the Northern Cultural Communities and the Office for the Southern Cultural Communities and instead create a new office to be called the National Commission on Indigenous People, which shall exercise all the powers and duties vested in the said offices.

43. To hasten the passage of the law on ancestral domains, President Ramos certified on 25 October 1996 Senate Bill No. 1476 entitled "An act to recognize, protect and promote the rights of indigenous peoples, otherwise known as the Indigenous Cultural Communities/Indigenous Peoples' Rights Act of 1996, establish implementing mechanisms therefore and for other purposes" as an urgent administrative measure. (See annex V - Highlights of the Indigenous Peoples' Rights Act.) In the meantime, the executive department, through the DENR, initiated the identification, delineation and recognition of ancestral lands and domain claims through DENR Administrative Order No. 02, Series of 1993. This is intended to ensure the integrity of the traditional areas of the ICCs while the needed law is being enacted. With this Order, certificates of ancestral land/domain claims (CALC/CADC) are issued to individual/family/clan and indigenous communities, respectively. Although the certificates issued are not titles to the land but more of stewardship grants, this initiative ensures the ICC priority in managing their traditional areas and benefiting from the resources therefrom in accordance with existing laws. The CALCs/CADCs provides the security of tenure for the ICCs over their traditional areas, since once an area is issued with a certificate, all existing resource access permits thereto, except those issued to members of the concerned indigenous community, cannot be renewed after expiration without the written consent of the concerned ICC. Also, developmental activities cannot be undertaken without the free and informed consent of the concerned community.

44. This initial step towards the full recognition of ancestral lands and domains has generated a positive response from most of the ICCs and is considered an innovative and daring move by the Government in the face of many unresolved legal issues concerning ancestral lands and domains. To date, DENR has issued 110 certificates of ancestral land claim covering about 9,971 hectares and benefiting about 3,778 families from the ICCs while 75 certificates of ancestral domain claim covering 1,057,895 hectares have been issued to 30,000 families from the ICCs.

45. In keeping with the thrust of the Social Reform Agenda, the DENR has also been named the lead agency in the flagship programme entitled "Recognition, protection and management of ancestral domains". (See annex VI - List of five major commitments under the flagship programme for the ICCs.)

46. Finally, in the implementation of the Comprehensive Agrarian Reform Programme (CARP), the Department of Agrarian Reform (DAR) is mandated to improve the tenure of indigenous cultural communities in their ancestral lands, in accordance with the above-mentioned section 9 of RA6657. In recognition of their rights to their ancestral lands, DAR issued Administrative Order No. 04, Series of 1996 (20 August 1996) entitled "Rules and regulations governing the issuance of CARP beneficiary certificates (CBC) to indigenous cultural communities and peoples pursuant to section 9 of Republic Act No. 6657" which enables DAR to issue CBCs to members of the ICCs engaged in agricultural activities. This is in coordination with the issuance to them of CADCs/CALCs by the DENR. The CBC may be issued to tribes and sub-tribes as a whole, or to individual indigenous farmers, depending on the situation existing in the area or locality. However, the majority decision of the indigenous community shall prevail. With the issuance of CBCs, the recipient ICCs will be developed into Agrarian Reform Communities (ARCs) which will benefit from a full range of support services under CARP and which will qualify for foreign assistance Programmes given to agrarian reform beneficiaries. (See annex VII - Administrative Order No. 04, Series of 1996.)

47. The mechanisms for ICC participation in policy and decision-making consist of the following:

(a) Representation by the ICCs in the Social Reform Council which is chaired by the President, as well as in the Basic Sectors Counterpart Council;

(b) Representation by the ICCs within a protected area in the Protected Area Management Board, under the National Integrated Protected Area System (RA No. 7576);

(c) Representation by the ICCs in the Provincial Special Task Force on Ancestral Domains which oversees the implementation of the identification and delineation of ancestral domain claims in the provincial level (DENR Special Order No. 25, Series of 1993).

48. It will be recalled that, in accordance with article 10, sections 15-21, of the 1987 Constitution, Republic Act No. 6766 entitled "An act providing for an organic act for the Cordillera administrative region" was passed in 1989, providing for autonomy in the Cordillera region in northern Philippines. A plebiscite was held on 30 January 1990 to ratify the Act but the results showed that only the Province of Ifugao, out of the five provinces and one city comprising the Cordillera region, approved the autonomy law. Another bill (House Bill No. 3719) entitled "An act to establish the autonomous region of the Cordillera" is still pending in Congress.

49. Finally, as yet another manifestation of the Philippine policy to promote the welfare of the indigenous cultural communities, President Ramos declared 1993 as the National Year of the Indigenous People, through

Administrative Order No. 08 dated 10 January 1993. The Philippine Government, through Administrative Order No. 206, created the National Committee on the International Decade for the World's Indigenous People and declared 1995-2005 as the National Decade for Filipino Indigenous People. In this regard, the Philippines hosted in Manila from 24 February to 3 March 1996 the Global Indigenous Cultural Olympics/Summit for Peace and Sustainable Development (GICOS).

50. It was during this Summit that the Sectoral Action Plans for Human Rights Protection of indigenous cultural communities and Muslim communities were presented to a Leader's Forum by the Office for Northern Cultural Communities, the Office for Southern Cultural Communities and the Office of Muslim Affairs in coordination with the Commission on Human Rights. These Sectoral Action Plans formed part of the Philippine Human Rights Plan (1996-2000) which was presented earlier to President Ramos, in compliance with Memorandum Order No. 335 (dated 26 January 1996) directing all concerned agencies, with the Commission on Human Rights as the lead agency, to formulate a long-term plan calling for legislative, administrative and other measures to address the human rights concerns of vulnerable and disadvantaged sectors of the society including the indigenous cultural communities and the Muslim communities.

B. The Muslim Filipinos in the Philippines

51. As of 1996, Muslims constitute nearly 7 million of all Filipinos who are now estimated to number almost 70 million. Nearly 4 million are in the southern Philippines while the rest are in the Visayas, the National Capital Region and Luzon. The Maranaos, the Maguindanaos and the Tausogs are the major tribes, while the rest include the Yakans, the Samals, Kalagans, Balik-Islam, Badjao, Jama-Mapun, Palawanons and the Kalibugan.

52. Due to long years of neglect by the central Government, the Muslim Filipinos suffered from widespread poverty and income disparity, limited employment opportunities, and inadequate basic social services and support facilities. The secessionist movement mounted by the Moro National Liberation Front (MNLF) and other groups and the resulting volatile peace and order situation in some areas of the Mindanao region had been a major deterrent to the Muslim Filipinos' growth and development.

53. In tandem with government efforts to spur the socio-economic development of the indigenous cultural communities, increasing attention has been given to the situation of the Muslim Filipinos whose needs and rights are also being referred to by the above-mentioned constitutional provisions on indigenous cultural communities and who also look forward to benefiting from the passage of the law on ancestral domains.

54. The Office of Muslim Affairs (OMA), which had been tasked to promote the welfare and total development of the Muslim Filipinos, continues to undertake programmes and strategies which include the following: implementation of socio-economic and cultural development projects; promotion and development of Muslim cooperatives; promotion, development and enhancement of Muslim culture and institutions; promotion and development of Muslim settlements; provision of support services programmes; rehabilitation of rebel returnees;

coordination with Muslim countries; coordination, supervision and administration of pilgrimage; institutional support to the annual Qur'an reading competition at the provincial, regional and national levels; support to Shariah project implementation; and support to Madrasah accreditation and institutionalization.

55. The Office has the special responsibility of promoting the cultural heritage of Muslims through its efforts towards achieving Madrasah accreditation and institutionalization; its support for the Shariah project implementation; and its conduct, supervision and control of the yearly haj or pilgrimage to Mecca. With regard to its function of administering the country's Shariah programme, the Office had conducted several Shariah Training Seminars since the inception of the programme and had assisted the Supreme Court in the giving of special Shariah bar examinations to qualified examinees. There are presently 4 courts out of the programmed 5 Shariah district courts, and 28 courts out of the 51 Shariah circuit courts which are already operational in southern Philippines. (See annex VIII - Accomplishments of the Office of Muslim Affairs.)

56. The successful conclusion of the peace negotiations between the Government and the MNLF is expected to speedily usher in a new era of development in southern Philippines and boost government efforts to involve the indigenous cultural communities and the Muslim Filipinos in the development process.

57. As noted in previous reports, the constitutional recognition given to the desire for autonomy in the Muslim region and the negotiations for peace led to the enactment of Republic Act No. 6734 which created the Autonomous Region in Muslim Mindanao (ARMM). In a plebiscite conducted on 9 November 1989, there were only 4 provinces out of the 14 identified by the Tripoli Agreement which voted for the ARMM namely: Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi. Areas with a Muslim majority such as Lanao del Norte, Basilan and the cities of Cotabato and Marawi opted to stay out of the ARMM.

58. The ARMM is headed by a regional governor, assisted by a vice-regional governor. There are 21 assemblymen who are elected by districts. Lanao del Sur, Maguindanao and Sulu have two districts each while Tawi-Tawi has one. Every district sends three assemblymen to the Regional Legislative Assembly.

59. In 1996, the Ramos administration was able to forge a peace agreement with the MNLF after three years of difficult negotiations. The peace agreement provides for phase I and phase II in the implementation of the Tripoli Agreement.

60. Phase I shall cover a three-year period starting after the signing of the peace agreement with the issuance of an executive order establishing the Special Zone of Peace and Development (SZOPAD), the Southern Council for Peace and Development (SPCPD) and the Consultative Assembly. (See annex IX - Executive Order No. 371 of 2 October 1996 proclaiming a Special Zone of Peace and Development in the Southern Philippines and establishing therefor the Southern Philippines Council for Peace and Development and the Consultative Assembly.) During this phase, the process of integrating the MNLF elements

with the Armed Forces of the Philippines will commence. The joining in of MNLF elements with the Philippine National Police as part of the regular police recruitment programme will also take place in this phase. (See annex X - Administrative Order of 15 October 1996 providing for the implementation of the Peace Agreement on the joining of MNLF elements with the Philippine National Police.)

61. Phase II shall involve an amendment to or repeal of the Organic Act (Republic Act 6734) of the Autonomous Region in Muslim Mindanao (ARMM) through congressional action, after which the amendatory law will be submitted to the people through a plebiscite. The bill shall include the pertinent provisions of the Final Peace Agreement and the expansion of the present ARMM.

62. The SZOPAD is an area consisting of 14 provinces and all the cities therein which shall be the focus of intensive peace and development efforts. It consists of the provinces of Basilan, Cotabato, Davao del Sur, Lanao del Norte, Lanao del Sur, Maguindanao, Palawan, Sarangani, Sultan Kudarat, Sulu, South Cotabato, Tawi-Tawi, Zamboanga del Norte and Zamboanga del Sur and the cities of Cotabato, Dapitan, Dipolog, General Santos, Iligan, Marawi, Pagadian, Puerto Princesa and Zamboanga.

63. Development efforts in the SZOPAD will focus on the following:

(a) Provision of basic services in the depressed areas (water, electricity, educational facilities, socialized housing, and health and sanitation);

(b) Provision of adequate infrastructure facilities to support the development requirements within the SZOPAD and enhance linkages with areas outside of it;

(c) Promotion of investments and trade, both domestic and international, to generate employment and create opportunities for economic development;

(d) Provision of entrepreneurial development support, livelihood assistance and credit facilities to those in the SZOPAD, especially the vulnerable sectors such as women, farmers and fisherfolk, the unemployed, urban and sectoral poor, among others;

(e) Provision of capability-building assistance for local communities and organizations, especially women's groups, to take full advantage of development programmes and projects in the SZOPAD.

64. Development efforts in the SZOPAD will be carried out through institutional mechanisms such as the Southern Philippines Council for Peace and Development (SPCPD), the Cabinet Officer for Regional Development (CORD) system, area-specific development task forces, a regional development councils system, a regional peace and order councils system, the Southern Philippines Development Authority (SPDA) and through existing development programmes, including the growth triangle Brunei-Indonesia-Malaysia-Philippines East ASEAN

Growth Area (BIMP-EAGA), Social Reform Agenda localization programmes, flagship projects and the Presidential Council for Countryside Development (PCCD) programmes for priority provinces.

65. Development efforts in the SZOPAD will give priority to the following areas:

(a) Provinces in the area belonging to the 20 poorest provinces in the country (namely Basilan, Sulu and Tawi-Tawi);

(b) All fifth- and sixth-class municipalities in the provinces under the SZOPAD;

(c) Depressed communities within the towns and cities covered by the SZOPAD.

66. The projects to be implemented in the SZOPAD include the following:

(a) Human development projects, including but not limited to health and sanitation services, educational development and welfare services;

(b) Socialized housing projects;

(c) Water supply development;

(d) Road and bridges to connect depressed communities to centres of economic activities;

(e) Airports and seaports;

(f) Telecommunications and power/electrification programmes;

(g) Development and promotion of tourism to harness the tourism potential and enhance appreciation and awareness of the history and culture in the SZOPAD;

(h) Environmental and marine resources improvement programme to protect and conserve the natural resources in the SZOPAD;

(i) Enhancement of agricultural production through irrigation and post-harvest and marketing facilities;

(j) Establishment of food-processing facilities to generate employment and create forward and backward economic linkages;

(k) Establishment of provincial industrial centres and People's Industrial Enterprises to serve as focal points for business activities;

(l) People-empowerment programmes to ensure greater participation of women and other disadvantaged groups in governance and in the determination of their political, economic and social destinies.

67. The SPCPD is a transitory body under the control and supervision of the President; it shall be composed of one chairman, one vice-chairman and three deputies, one each representing the Muslims, the Christians and the cultural communities (Lumads). In contrast with the ARMM, it is devoid of legislative powers and governing authority. The SPCPD shall coordinate and promote the economic and social growth and development of the SZOPAD. In particular it has the following functions:

(a) To take charge in promoting, monitoring and coordinating the improvement of peace and order in the SZOPAD;

(b) To focus on peace and development efforts, more particularly in the depressed areas of the SZOPAD;

(c) To provide support to local government units as necessary;

(d) To assist in the preparation for the holding of elections, referenda or plebiscites and peoples initiatives in the area as may be deputized by the Commission on Elections (COMELEC);

(e) To cause the creation of such offices or instrumentalities as may be necessary for the effective and efficient administration of affairs in the area. The offices referred to are those internal to the SPCPD such as administrative support staff or such ad hoc committees that may be formed from existing government personnel and representatives from non-governmental organizations or people's organizations.

68. The specific tasks of the SPCPD with respect to the development concerns in the SZOPAD are as follows:

(a) Promote, coordinate and monitor development efforts in the SZOPAD, including the encouragement of domestic and foreign investments, subject to existing laws, especially from the Organization of the Islamic Conference (OIC) and the Association of South-East Asian Nations (ASEAN);

(b) Network with government and other development institutions to generate resources and economic opportunities for the SZOPAD;

(c) Coordinate for the Office of the President with concerned departments and local government units in the promotion and implementation of the programmes and projects of the following agencies: Southern Philippines Development Authority (SPDA), the Office of Muslim Affairs (OMA), the Office for Southern Cultural Communities (OSCC), only insofar as their respective offices or projects located in the SZOPAD are concerned; the Basilan Development Task Force, the Central Mindanao Development Task Force, the Sulu Development Task Force, and the Special Development Planning Task Force.

69. The Consultative Assembly shall serve as an advisory body to the SPCPD in the development of the SZOPAD. It shall be transitory and shall be under the control and supervision of the President. It shall be composed of the following: Chairperson of the SPCPD who shall be the presiding officer of the

Assembly; the Governor and Vice Governor of the ARMM and the 14 governors of the provinces and 9 city mayors in the SZOPAD; and 55 members from various sectors, including recommendees of non-government organizations and people's organizations. It shall have the following functions:

(a) To serve as a forum for consultation and airing of issues and concerns;

(b) To conduct public hearings as may be necessary and to provide appropriate advice to the SPCPD;

(c) To formulate and recommend policies to the President through the Chairman of the SPCPD and adopt rules and regulations to the extent necessary for the efficient and effective administration of the affairs of the area.

70. With the support of the political party in power (Lakas-NUCD), MNLF leader Nur Misuari ran and won handily in the election for ARMM Governor in September 1996. The ARMM Governor was also appointed by the President as SPCPD Chairman.

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I. Statistical tables on the composition of the population and brief description of the Indigenous Cultural Communities

II. Accomplishment Report of the Office for Northern Cultural Communities

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VII. Department of Agrarian Reform Administrative Order No. 04, Series of 1996, "Rules and regulations governing the Issuance of CARP beneficiary certificates (CBC) to indigenous cultural communities and peoples pursuant to section 9 of Republic Act No. 6657

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IX. Executive Order No. 371 (2 October 1996) proclaiming a Special Zone of Peace and Development in the southern Philippines and establishing therefor the Southern Philippines Council for Peace and Development and the Consultative Assembly

X. Administrative Order No. 297 (15 October 1996) providing for the implementation of the Peace Agreement on the joining of MNLF elements with the Philippine National Police

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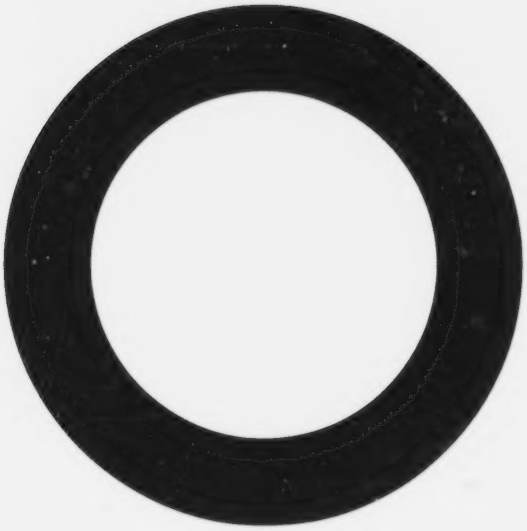

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OF RACIAL DISCRIMINATION

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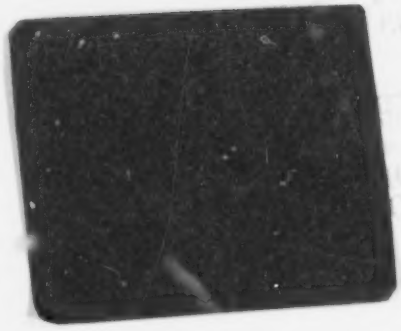
ARTICLE 9 OF THE CONVENTION

Fourteenth periodic report of States parties due in 1996

Addendum

Libyan Arab Jamahiriya*

[Original: Arabic]
[4 March 1997]



* This document contains the eleventh, twelfth, thirteenth and fourteenth periodic reports, submitted in one document, due on 4 January 1990, 1992, 1994 and 1996, respectively. For the tenth periodic report of the Libyan Arab Jamahiriya and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/172/Add.1 and CERD/C/SR.852.

The information submitted by the Libyan Arab Jamahiriya in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in the basic document HRI/CORE/1/Add.77.

GE.97-16207 (E)

1. The present report attempts to give an overall idea of the legislative, judicial and administrative measures adopted by the Great Socialist People's Libyan Arab Jamahiriya in fulfilment of its obligations under the terms of the International Convention on the Elimination of All Forms of Racial Discrimination, as well as any developments regarding these measures up to 5 January 1994, the date of submission of this report. Although the phenomenon of racial discrimination does not exist in Libyan society, legislative, judicial and administrative measures have been taken to forestall any incipient manifestations of this phenomenon and the present report gives an insight into the joint endeavours of the Great Socialist People's Libyan Arab Jamahiriya and the international community to combat this phenomenon at the international level.

I. GENERAL INFORMATION

2. The Libyan Arab Jamahiriya is situated in central North Africa between latitudes 18° and 23° N and longitudes 9° and 25° E. It has a Mediterranean coastline of 1,800 km and is bounded on the eastern side by Egypt and the Sudan, on the western side by Tunisia and Algeria and on the southern side by Chad and Niger. It covers a total area of 1,775,500 km^2, which makes it the fourth largest country in Africa after the Sudan, the Congo and Algeria.

3. The Libyans, who are of common racial origin, profess Islam and speak Arabic. Their total number has more than quadrupled in less than 40 years from 1,042,000 in 1954 to 1,516,000 in 1964, 2,052,000 in 1973 and 3,231,000 in 1984. In 1992, the population was estimated at 4.8 million persons. During the period from 1954 to 1994, the population growth rate ranged from 3.8 to 4.2 per cent. This rapid increase in population growth was attributable to various factors including, in particular, the rising birth rate and the declining mortality rate due to the improvement in standards of living, the availability of health care for the population and the return of Libyans who had migrated from the country during the Italian colonial era.

4. According to the statistics, the male proportion of the population is larger than the female. However, the male/female ratio has begun to decline from 108:100 in 1954 to 109:100 in 1964 and 104:100 in 1992 and is expected to become 102:100 in the year 2015.

5. The non-Libyan population, who came to live and work in the Libyan Arab Jamahiriya, increased from about 47,000 in 1954 to about 412,000 in 1984 and 457,000 in 1992. However, it should be noted that the number of non-Libyans may exceed this figure, since there are no accurate and reliable data on some non-Libyans who are not permanently resident but enter the country for short periods of time ranging from one week to six months. The total Libyan and non-Libyan population is expected to increase during the period from 1994 to 2015 during which it is estimated that the number of Libyans will increase to 9,873,000 persons and the number of non-Libyans to 1,756,000 persons. Table 1 shows the evolution in the size of the Libyan and non-Libyan population, as well as the future estimates, for the period 1954-2015, while table 2 shows the evolution in the annual compound population growth rates in the Jamahiriya by sex and nationality for the period 1954-2015.

Table 1

Evolution of the population of the Jamahiriya
during the period from 1954 to 2015
(millions)

Population	Results of the general population censuses				Expenditure survey	Future projections			
	1954	1964	1973	1984	1992*	1994	1995	2000	2015
Libyans	1.042	1.516	2.052	3.231	4.366	4.8	5.009	5.986	9.837
Non-Libyans	0.047	0.049	0.197	0.412	0.457	0.72	0.751	0.898	1.756
Total	1.089	1.564	2.249	3.643	4.823	5.52	5.76	6.884	11.593

Source: Department of Statistics and Censuses/General People's Committee for Planning/General People's Committee for Education and Scientific Research.

* The non-Libyan population includes only registered residents.

Table 2

Evolution of annual compound population growth rates in the Jamahiriya, by sex and nationality, during the period from 1954 to 2015

Nationality	Sex	General censuses and household expenditure survey				Future projections	
		1954-1964	1964-1973	1973-1984	1984-1992	1992-2000	2000-2015
Libyans	Male	3.9	3.3	4.1	3.8	3.9	3.3
	Female	3.8	3.5	4.3	3.8	4	3.4
	Total	3.8	3.4	4.2	3.8	3.9	3.4
Non-Libyans	Male	-	20.6	7.7	-	9.6	4.6
	Female	0.7	11	5.1	8.2	7.8	4.6
	Total	0.3	16.7	6.9	1	8.8	4.6
Total	Male	3.7	4.3	4.6	3	4.6	3.5
	Female	3.7	3.9	4.3	4.2	4.5	3.5
	Total	3.7	4.1	4.5	3.6	4.5	3.5

Sources: As already specified.

6. All Libyans profess the Islamic faith, the adherents of which respect the religious observances of non-Muslims. This respect is advocated by Islam itself and is also guaranteed by the Constitutional Declaration promulgated on 11 December 1969, article 2 of which stipulates that: "The State shall protect freedom of religious observance in accordance with prevailing customs." In actual fact, in some Libyan towns there are churches in which non-Muslims living in Libyan territory can perform their religious observances.

7. The Constitutional Declaration promulgated on 11 December 1969 stipulates that authority is exercised by the people. Since the Declaration of the Establishment of the People's Authority on 2 March 1977, the political system of the Libyan Arab Jamahiriya has been based on the direct authority of the people, which is exercised through the basic people's congresses, the people's committees, trade unions, occupational federations, professional associations and the General People's Congress.

8. The basic people's congresses, comprising all members of society, both men and women, are the sole instrument for the exercise of legislative authority in the country and take all decisions governing public life. In particular, they have the following decision-making powers:

(a) Adoption of legislation in various fields;

(b) Drafting and adoption of the Economic Plan and the public budgets;

(c) Ratification of treaties concluded between Libya and other States;

(d) Definition of Libya's relations with other States;

(e) Formulation of public policies;

(f) Decisions concerning matters of war and peace;

(g) Election and accountability of their secretariats and people's committees.

9. The people's committees, which constitute the instrument for the implementation of the decisions of the basic people's congresses, manage all the sectors, institutions, organizations, departments, bodies, companies and other administrative units and are accountable to the basic people's congresses.

10. The General People's Congress, in which all the basic people's congresses, people's committees, trade unions, occupational federations and professional associations are represented, is responsible for the drafting and promulgation of legislation.

11. Judicial authority is exercised by the various types and levels of courts in accordance with the provisions of the Organization of the Judiciary Act and the Supreme Court Act. The working procedures of the courts are regulated by law. The judiciary, which is independent, hands down judgements in cases brought before it in accordance with the legislation in force.

12. During the last 25 years, Libya's national economy has witnessed major economic and social changes by virtue of the considerable investments that have been made through the development plans. Domestic investment, being an important stimulus for economic growth and the development of national income, has increased steadily since the 1970s due to the fact that, through various economic plans, Libya's strategy for economic transformation has been to use most of the domestic savings generated by the increase in the prices and quantities of petroleum, exported during that period for local investment in the various economic sectors in such a way as to achieve higher productivity in the basic agricultural and industrial sectors, ensure that the growth rate of national income in real terms exceeds the population growth rate, diversify the sources of national income and reduce reliance on petroleum as the main source of income. There were notable rises in the gross domestic product during this period, in spite of the sharp fluctuations in the prices of petroleum, and, consequently, in the quantities exported. In comparison with the base year 1970, GDP was seven times higher at the end of 1991 and had been eight times higher in 1980 due to the rise in international petroleum prices.

13. Through the investment programme that was implemented during the period 1970-1988, the economic development plans sought to restructure the national economy in favour of non-petroleum-based economic activities in such a way as to provide new and renewable sources of income that were not dominated by the crude petroleum sector, which constitutes a non-renewable and depletable source. However, the coercive measures and sanctions imposed on Libya have damaged its economic development and production capacity, thereby violating the basic principles of international law and international conventions in the field of human rights in a manner which is incompatible with the development goals of the United Nations and its specialized agencies.

II. OVERVIEW OF THE POLICY OF ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

Article 1

14. The citizens of the Libyan Arab Jamahiriya belong to the same race, profess the same religion and speak the same Arabic language. This has helped to prevent the appearance of the phenomenon of racial discrimination in any of its forms, since there are no communities based on religion, ethnic origin, language, race, colour or political affiliation.

15. Libyans live in a homogeneous society in which equality and social solidarity prevail. This society derives its hatred of all forms of racial discrimination, as well as its inclination towards tolerance, from the values advocated by Islam and the concepts underlying the legislation in force preclude the appearance of any form of racial discrimination.

16. Article 5 of the Constitutional Declaration stipulates that all citizens are equal before the law. Article 3 thereof further stipulates that social solidarity is the basis of national unity.

17. According to the Great Green Document on Human Rights in the Age of the Masses, which was adopted by the General People's Congress on 12 June 1988 (United Nations General Assembly document A/44/331), the members of the

society of the Jamahiriya reject any discrimination among human beings on grounds of colour, race, religion or culture and principle 21 of that Document places men and women on an equal footing in all human respects.

18. Article 1 of the Promotion of Freedom Act No. 20 of 1991 stipulates that all male and female citizens of the Jamahiriya are free and equal in regard to their rights, which are inviolable.

19. Slavery and the slave trade are prohibited by the Libyan Penal Code, article 420 of which stipulates that: "Anyone who enslaves a person or places him in a situation similar to slavery shall be punished by a term of 5-15 years' imprisonment. Article 426 of the same Code further stipulates that: "Anyone who deals or trades in slaves or in any way disposes of a person held in a state of slavery or a state resembling slavery shall be punished by a term of up to 10 years' imprisonment. A penalty of 3-12 years' imprisonment shall be imposed on anyone who sells, gives away, possesses or acquires a person held in slavery or in a state similar to slavery or causes him to remain in the said state."

20. Everyone has a guaranteed right to exercise his political rights on an equal footing in accordance with article 2 of the Promotion of Freedom Act, which stipulates that: "Every citizen has the right to exercise authority and self-determination in the people's congresses and the people's committees. No citizen may be denied the right to be a member thereof or to elect their secretariats, provided that he or she meets the requisite conditions."

21. The Libyan Arab Jamahiriya is a party to most of the conventions concerning human rights, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which, together with the International Convention on the Elimination of All Forms of Racial Discrimination, are binding and, in terms of legal value, prevail over the provisions of domestic legislation. In the event of conflict between the provisions of domestic legislation and those of a convention to which the Libyan Arab Jamahiriya is a party, the provisions of the latter prevail over Libyan legislation. In keeping with this principle, the International Convention on the Elimination of All Forms of Racial Discrimination is binding on the judiciary and any interested party is entitled to invoke its provisions before the Libyan courts, which have an obligation to rule on such a petition in such a way as to ensure the application of the provisions of the Convention. International conventions are ratified by the basic people's congresses in accordance with the law and their provisions thereby become an integral part of domestic legislation and binding on all.

III. INFORMATION CONCERNING ARTICLES 2-7 OF THE CONVENTION

Article 2

22. The Holy Qur'an, which is the social code in the Libyan Arab Jamahiriya, contains many verses which remind all people that they are of common origin and that they are equal, no distinction being made between one person and another except on the basis of their acts. In general, these verses prohibit

mockery of men or women and reject racial discrimination against persons or groups, regardless of whether such discrimination is practised by the ruler or the ruled.

23. Even though Libyan society is homogeneous and abhors all forms of racial discrimination, the Great Green Document on Human Rights in the Age of the Masses, which was promulgated in 1988, contains many principles designed to sanctify and safeguard human freedom and ensure a decent life for all members of society. The relevant principles in this regard are as follows:

Principle 16: "The society of the Jamahiriya holds humanitarian standards and values sacred and aspires to a humane society without aggression, without wars, without exploitation and without terrorism, a society in which no one is regarded as being great or unimportant. All nations, peoples and ethnic groups have a right to live in freedom according to their choice and likewise have a right to exercise self-determination and establish their national identity. Minorities are entitled to protection for their members and their heritage and their legitimate aspirations must not be suppressed, nor must force be used to merge them in any other ethnic group."

Principle 17: "The members of the society of the Jamahiriya affirm the human right to enjoy the benefits, privileges, values and examples afforded by solidarity, cohesion, unity, concord and family, tribal, national and human feelings of affection. They therefore strive to establish the natural national entity for their nation and assist those struggling to establish their own natural national entities. The members of the society of the Jamahiriya reject any discrimination between human beings on grounds of their colour, sex, religion or culture."

Principle 18: "The members of the society of the Jamahiriya defend and uphold freedom anywhere in the world and assist those oppressed for freedom's sake. They encourage peoples to confront injustice, tyranny, exploitation and colonialism and call upon them to resist imperialism, racism and fascism, in accordance with the principle of the collective struggle of peoples against the enemies of freedom."

Principle 21: "The members of the society of the Jamahiriya, both men and women, are equal in all human respects ...".

24. Article 1 of Act No. 5 of 1991, concerning the application of the principles of the Great Green Document, stipulates that the legislation in force prior to the promulgation of the Great Green Document shall be amended in a manner consistent with the principles of that Document and no legislation contrary to those principles may be promulgated.

25. Article 1 of the Promotion of Freedom Act No. 20 of 1991 stipulates that all citizens of Libya, whether male or female, are free and equal in regard to their rights, which are inviolable. This Act regulates the rights of citizens, including their right to exercise authority and defend their country, their freedom to express their opinions and ideas and establish trade unions, federations and charitable associations, their freedom to choose the type of employment best suited to them, their human right to enjoy the fruit

of their labour and protection of their private property and their right to benefit from the land. The Act also prohibits the conduct of scientific experiments on the body of any living person without his voluntary consent.

26. Article 289 of the Penal Code, concerning interference with the performance of religious observances and disrespect for holy places, stipulates that: "A penalty of up to one year's imprisonment or a fine of up to 50 dinars shall be imposed on anyone who disrupts or impedes, by violence or threats, the holding of public religious observances or any private religious ceremony. The same penalties shall apply to anyone who damages, breaks, destroys or desecrates premises intended for the holding of religious observances or other objects venerated by the members of a religious community or population group." Article 290 of the same Code, concerning attacks on religion, further stipulates that: "The penalties prescribed in the preceding article shall also apply to anyone who openly attacks a religion the observances of which are held in public. The provisions of this article apply to: (i) The printing or publication of a book that is sacred in the eyes of the adherents of a religion, the observances of which are held in public, in such a way as to deliberately distort and alter the meaning of the text of the said book; (ii) Mimicry of a religious ceremony or rite in a public place with a view to ridiculing it or entertaining onlookers."

27. The Libyan Arab Jamahiriya has hosted the International Organization for the Elimination of All Forms of Racial Discrimination, a non-governmental organization established in 1976 which enjoys consultative status with the Economic and Social Council and the aim of which is to endeavour, by every possible means, to contribute to the elimination of all forms of racial discrimination throughout the world.

28. The Libyan Arab Jamahiriya has also participated in the international conferences to combat racism and racial discrimination, particularly the first conference held at Geneva in 1978 under the auspices of the United Nations and the second conference likewise held at Geneva in 1983 under the auspices of the United Nations. It hosted the first conference on solidarity with peoples struggling under the domination of apartheid and with the front-line States, which was held at Tripoli from 23 to 27 November 1985 under the joint auspices of the Organization of African Jurists, the Association of Libyan Jurists and the General People's Congress in the Jamahiriya.

Article 3

29. As a matter of policy, the Libyan Arab Jamahiriya is firmly opposed to all forms of racial discrimination and has supported the liberation movements and groups struggling against enslavement of the majority by ruling minorities in South Africa when that country was suffering under the apartheid regime, which the Jamahiriya regarded as a crime against humanity, and duly expressed its full commitment to the total boycott of the former apartheid regime in South Africa.

30. The Jamahiriya regarded itself as one of the African States which opposed and endeavoured to eliminate that system of racial discrimination in order to free the African continent from that odious policy that flouted human rights. In fact, the Libyan Arab Jamahiriya did its utmost and mobilized all

its resources in order to contribute, together with the international community, to the elimination of racist practices and racial discrimination and, to that end, supported all the resolutions of the General Assembly of the United Nations condemning those policies and proclaiming the First, Second and Third Decades to Combat Racism and Racial Discrimination.

Article 4

31. Libyan legislation prohibits all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin. Reference has already been made to the content of principle 16 of the Great Green Document on this subject (para. 10).

32. The citizens of Libya are descended from the same race, speak the same language (Arabic) and profess the same religion (Islam). Hence, there are no theories or communities based on religion, race, ethnic origin or political affiliation.

33. It is noteworthy that paragraph 203 of the Penal Code prescribes penalties for anyone who commits an act designed to provoke civil war, disrupt national unity or discriminate among citizens of the Jamahiriya.

Article 5

34. The legislation in force in the Libyan Arab Jamahiriya guarantees all the rights referred to in this article in the following manner:

35. Article 5 (a): Article 5 of the Constitutional Declaration stipulates that: "All citizens are equal before the law." Article 30 of the same Declaration further stipulates that: "Everyone has the right to resort to the courts in accordance with the law."

36. According to principle 9 of the Great Green Document on Human Rights in the Age of the Masses: "The society of the Jamahiriya guarantees the right of legal redress, as well as the independence of the judiciary and the right of every accused person to a fair and impartial trial."

37. Under article 30 of the Promotion of Freedom Act No. 20 of 1991: "Everyone has the right to apply to the courts, in accordance with the law. The court must provide the person concerned with all the requisite safeguards, including a lawyer, and he has the right to avail himself of the services of a lawyer not chosen by the court provided that he bears the costs of the said lawyer's fees."

38. Article 27 of the Constitutional Declaration stipulates that: "The aim of the judgements handed down by the courts is to protect the principles of society and the rights, dignity and freedoms of individuals."

39. Article 1 of the People's Court Act No. 5 of 1988 made provision for the establishment of a People's Court to promote freedom, ensure legal redress for persons who have been wronged, prevent tyranny and oppression, strengthen the foundations of justice and security and consolidate the people's authority.

In accordance with article 2, paragraph 5, the People's Court is competent to hear appeals against measures or decisions that are prejudicial to the freedom and other basic rights of citizens. Under the provisions of article 2, paragraph 6, the Court is also competent to hear appeals against measures, procedures or decisions that are prejudicial to the personal freedoms provided for in chapter IV, sections 1 and 2, of the Penal Code if, for any reason, the matter is not referred to the judicial authority.

40. Article 5 (b): Article 31, paragraph (c), of the Constitutional Declaration stipulates that: "... it is prohibited to inflict physical or mental harm on an accused person or a prisoner".

41. According to article 14 of the Promotion of Freedom Act: "No person's liberty may be restricted or taken away, nor shall anyone be searched or questioned, except by order of a competent judicial authority and in the legally stipulated circumstances and time-limits if he is accused of committing a legally punishable act."

42. Chapter IV, section 2, of the Libyan Penal Code deals with offences against personal freedom. Its relevant provisions are as follows:

"Article 428:

"1. Anyone who abducts, detains or confines any person or in any way deprives him of his personal liberty by force, threats or deception shall be punished by a term of up to five years' imprisonment.

"2. The penalty shall be a term of up to seven years' imprisonment if the offence was committed: (a) against an ascendant, a descendant or the spouse; (b) by a public official exceeding the limits of his official authority; or (c) in order to gain something in return for his release."

"Article 429:

"Anyone who, through the use of violence or threats, compels a person to perform, suffer or refrain from an act shall be punished by a term of up to two years' imprisonment. A term of detention shall be imposed if the threats were intended to compel the other person to commit a felony or if the threats were made in writing. If the offender obtained illicit benefit to the detriment of the other person, the penalty shall be a term of up to five years' imprisonment. The penalty shall be increased by one third if the violent or threatening acts involved the use of a weapon or if they were committed by a number of persons acting in association or by a person in disguise."

"Article 430:

"Anyone who threatens to inflict unlawful harm on another person shall be punished by a term of up to six months' imprisonment or a fine of up to 50 dinars. However, proceedings can be instituted only on the basis of a complaint by the victim."

"Article 431:

"Any public official who, in the discharge of his duty, uses violence against any person in such a way as to detract from his dignity or cause him physical pain shall be punished by a term of detention and a fine of up to 150 dinars."

"Article 432:

"Any public official who exceeds the limits of his authority by searching a person shall be punished by a term of detention."

"Article 433:

"Any public official who exceeds the limits of his authority by arresting a person shall be punished by a term of detention."

"Article 434:

"A term of detention and a fine of up to 50 dinars shall be imposed on any public official entrusted with the administration of a prison or a place intended for the enforcement of preventive measures if he admits a person thereto without an order from the competent authorities or if he refuses to obey their order to release the person concerned or unjustifiably prolongs the duration of his sentence or of the preventive measure taken against him."

"Article 435:

"Any public official who personally tortures or orders the torture of accused persons shall be punished by a term of 3 to 10 years' imprisonment."

43. Under the terms of article 64 of Act No. 10 of 1993 promulgating the Security and Police Act, any member of the Police Service is liable to prosecution and punishment if he ill-treats a member of the public during the discharge of his duties.

44. Article 5 (c): Article 2 of the Promotion of Freedom Act No. 20 of 1991 stipulates that: "Every citizen has the right to exercise authority and self-determination in the people's congresses and the people's committees. No citizen may be denied the right to be a member thereof or to elect their secretariats, provided that he or she meets the requisite conditions."

45. Article 4 of the Constitutional Declaration further stipulates that: "Public office is a trust vested in the persons undertaking it and, in the discharge of their tasks and duties, the aim of public officials should be to serve the people."

46. In accordance with paragraph 3 of the Declaration Establishing the People's Authority, every citizen of the Jamahiriya, whether male or female,

has a guaranteed right to take part in the conduct of public affairs. According to the Declaration, in the Jamahiriya authority is exercised through the following bodies:

(a) The basic people's congresses, which exercise legislative authority in the country;

(b) The people's committees, which exercise executive authority;

(c) The General People's Congress, in which the basic people's congresses, the people's committees, the trade unions, the federations and the professional associations are represented, which is responsible for the drafting of legislation and decrees. The people's congresses and the people's committees are governed by a special legislative enactment. The legislative authority, consisting in the basic people's congresses, is governed by Act No. 2 of 1994 and discusses draft legislation proposed by the executive authority. It is also empowered to propose any topics which it deems appropriate for discussion. Following their discussion, it takes decisions thereon, which are subsequently transmitted to the General People's Congress for drafting.

The executive authority is governed by Act No. 3 of 1994 and is exercised by the people's committees, which are responsible for the implementation of the legislation or decisions promulgated by the people's congresses. The judicial authority, which is independent, is responsible for handing down judgements in cases brought before it in accordance with the provisions of the legislation in force.

47. Article 5 (d): With regard to subparagraphs (i) and (ii), article 20 of the Promotion of Freedom Act No. 20 of 1991 stipulates that:

> "In time of peace, every citizen has the right to freedom of movement and freedom to choose his place of residence, as well as the right to leave the Jamahiriya and return thereto whenever he wishes.
>
> "By way of derogation from the provisions of the preceding paragraph, the competent court may issue provisional injunctions banning departure from the Jamahiriya."

48. According to principle 3 of the Great Green Document on Human Rights in the Age of the Masses: "The members of the society of the Jamahiriya enjoy freedom of movement and residence in time of peace." With regard to subparagraph (iii), principle 4 of that Document stipulates that: "Citizenship in the society of the Jamahiriya is a sacred right which may not be forfeited or withdrawn."

49. Nationality is regulated by Act No. 17 of 1954 and Act No. 18 of 1980 and their implementing regulations. It is noteworthy that women enjoy the same rights as men in regard to the right to acquire, change or retain their nationality or replace it with another nationality. Their exercise of this right is not affected by any other factors. A woman's nationality is not

affected if she marries a non-Libyan or if her husband changes his nationality, since she forfeits her nationality only if she wishes to adopt her husband's nationality.

50. With regard to subparagraph (iv), article 25 of the Promotion of Freedom Act No. 20 of 1991 stipulates that: "Every male and female citizen has the right to form a family based on a contract of marriage concluded with the consent of both parties and which cannot be dissolved without their consent or a judgement by a competent court."

51. Principle 21 of the Great Green Document further stipulates that: "Marriage is an equal partnership between two equal parties, neither being permitted to marry the other without his or her consent and divorce being permissible only with the concurrence of both parties or in accordance with a judgement resulting from a fair court hearing."

52. Article 8 of Act No. 10 of 1984, which regulates marriage and divorce and the effects thereof, stipulates that: "A guardian cannot force a young man or woman to marry against his or her will, nor can a guardian prevent his ward from marrying a spouse of his or her choice." Article 9 of the same Act further stipulates that: "If a lawful guardian prevents his ward from marrying the spouse of his or her choice, the ward may request a court to authorize the marriage if it deems such to be appropriate."

53. With regard to subparagraph (v), article 12 of Act No. 20 of 1991 stipulates that: "Private property is sacrosanct and inviolable, provided that its origin is legitimate and does not entail exploitation of, or cause material or moral harm, to others. It is prohibited to use such property in a manner incompatible with public order and morality. It is not permissible to expropriate private property except in the public interest and in return for fair compensation."

54. According to article 8 of the Constitutional Declaration: "The public property of the people forms the basis for the advancement and development of society and the achievement of self-sufficiency in production. Non-exploitative private property shall be safeguarded and shall not be expropriated except as provided by law."

55. With regard to subparagraph (vi), article 8 of the Constitutional Declaration further stipulates that: "Inheritance is a right governed by the Islamic Shari'a."

56. With regard to subparagraph (vii), article 2 of the Constitutional Declaration stipulates that: "Islam is the religion of the State, the official language of which is Arabic. The State shall protect freedom of religious observance in accordance with prevailing customs." Under the terms of article 5 of Act No. 20 of 1991: "Religion is a direct relationship with the Creator, without intermediary, and it is prohibited to claim a monopoly of religion or to exploit it for any other purpose."

57. According to article 289 of the Penal Code: "A penalty of up to one year's imprisonment or a fine of up to 50 dinars shall be imposed on anyone who disrupts or impedes, by violence or threats, the holding of public

religious observances or any private religious ceremony. The same penalties shall apply to anyone who damages, breaks, destroys or desecrates premises intended for the holding of religious observances or other objects venerated by the members of a religious community or population group." According to Article 290 of the same Code: "The penalties prescribed in the preceding article are also applicable to anyone who openly attacks a religion the observances of which are held in public."

58. Principle 10 of the Great Green Document stipulates that: "Religion, being an absolute faith in the transcendental, as well as a sacred spiritual value for every individual and for people in general, constitutes a direct relationship with the Creator, without any intermediary. The society of the Jamahiriya prohibits monopolization and exploitation of religion to stir up sedition, fanaticism, sectarianism, factionalism and conflict."

59. Freedom of thought is guaranteed by the Great Green Document, principle 19 of which stipulates that: "... and every member of the society of the Jamahiriya enjoys freedom of thought, research and creativity".

60. With regard to subparagraph (viii), article 8 of the Promotion of Freedom Act stipulates that: "Every citizen has the right to express and publicly proclaim his ideas and thoughts in the people's congresses and the information media of the Jamahiriya. No citizen shall be answerable for his exercise of this right unless he exploits it with a view to detracting from the people's authority or for personal ends. It is prohibited to advocate ideas or opinions clandestinely or to attempt to disseminate or impose them on others through enticement, force, intimidation or fraud."

61. With regard to subparagraph (ix), article 9 of the Promotion of Freedom Act further stipulates that: "Citizens are free to establish and join trade unions, professional and social federations and leagues and charitable associations in order to protect their interests or achieve the legitimate objectives for which those institutions were established." The same right is also embodied in principle 6 of the Great Green Document: "The members of the society of the Jamahiriya are free to form federations, trade unions and associations to protect their occupational interests."

62. Under the terms of article 1 of the Act promulgated on 30 October 1956, concerning public assemblies and demonstrations: "Individuals are entitled to assemble in a calm and peaceful manner and no police officer has the right to attend such gatherings, nor is there any need for the participants to notify him thereof." Public meetings are permitted within the limits of the regulations and provisions contained in that Act.

63. Under article 4 of the same Act: "The public authorities cannot prohibit a public gathering unless it is likely to disrupt security or public order. The prohibition order must be notified to one or more of the organizers of the gathering at his chosen place of domicile as soon as possible but not less than 24 hours from the time at which the gathering is scheduled to take place. The organizers of the gathering may lodge a protest against the prohibition order with the Minister of the Interior."

64. The establishment of associations is regulated by Act No. 111 of 1970.

65. Article 5 (e): According to article 4 of the Constitutional Declaration: "Work is a right, a duty and an honour for every citizen capable thereof. Public office is a trust vested in the persons undertaking it and, in the discharge of their tasks and duties, the aim of public officials should be to serve the people."

66. Article 10 of the Promotion of Freedom Act stipulates that every citizen is free to choose the type of employment best suited to him, alone or in association with others, without exploiting the endeavours of others and without causing material or moral detriment to third parties. Article 11 of the same Act further stipulates that every citizen has the right to enjoy the fruit of his labour and no part of the product of his labour may be withheld except to the extent required by law in order to ease the public burdens or in return for the provision of social services. Under the terms of article 29, children must not be used, by their families or others, to perform work that is incompatible with their abilities or which impedes their natural growth or is detrimental to their morals or their health.

67. According to p inciple 11 of the Great Green Document, society guarantees the right o work, which is a duty and a right for every individual to the extent of his abilities, alone or in association with others, and everyone has the right to choose the work that suits him, since the society of the Jamahiriya is a society of partners and not of hirelings.

68. Act No. 58 of 1970 regulates the terms and conditions of employment, protects workers from occupational hazards and specifies working hours, rest periods and the conditions for the employment of women and young persons.

69. Women have the right to perform appropriate work; otherwise, they would be placed in a situation in which they would be compelled to engage in work unsuited to their nature. With regard to rights and obligations, they are on an equal footing with men. The Wages Act No. 15 of 1981 lays down the principle of equal wages for equal work and responsibilities, within the framework of the satisfaction of basic needs and without any gender-specific discrimination.

70. The Promotion of Freedom Act, the Great Green Document and the Associations Act No. 111 of 1970 guarantee the right to form and join associations in the manner that has already been described in detail. Act No. 7 of 1975 regulates the right to establish trade unions.

71. The right to housing is embodied in principle 13 of the Great Green Document. Since 1969, great concern has been shown for this sector with a view to the provision of appropriate and salubrious accommodation for citizens.

72. Article 15 of the Constitutional Declaration stipulates that health care is a right which the State guarantees through the establishment of hospitals and medical treatment institutions in accordance with the law. Article 24 of the Promotion of Freedom Act further stipulates that: "Every citizen has the right to social welfare and social security. Society is the guardian of persons lacking a source of support and, as such, protects the needy, the aged, the disabled and orphans and ensures a decent livelihood for persons who

are incapable of work for reasons beyond their control." According to principle 14 of the Great Green Document, the society of the Jamahiriya is united in solidarity and guarantees its members a decent livelihood; it also ensures a high standard of health care for its members, caters for the welfare of mothers and children and protects the aged and the infirm.

73. Social security is regulated by Act No. 13 of 1980.

74. Education is a right and an obligation for all citizens. It is compulsory up to the end of the basic stage and is guaranteed by the State through the establishment of schools, institutes, universities and other cultural and educational institutions in which education is provided free of charge. The State shows particular concern for the physical, mental and moral welfare of young persons, as required by article 14 of the Constitutional Declaratio. Article 23 of the Promotion of Freedom Act also stipulates that every citizen has the right to education, information and choice of appropriate knowledge.

75. According to principle 15 of the Great Green Document, everyone has a natural right to education and knowledge, as well as a right to choose the education that suits him and the knowledge that he wishes to acquire, without pressure or compulsion.

76. According to principle 19 of the Great Green Document, every member of the society of the Jamahiriya enjoys freedom of thought, research and innovation and society must diligently endeavour to promote and develop the sciences, the arts and literature and ensure their dissemination among the masses.

77. Article 5 (f): Under the terms of article 33 of the Promotion of Freedom Act, public funds and facilities belong to society as a whole and must not be used for purposes other than those for which they are designated by the people. Public means of transport, as well as restaurants, cafes, theatres and parks, are accessible to all without any discrimination.

78. Decree No. 268 of 1985, promulgated by the Secretary of the General People's Committee for Information and Culture, calls for the presentation of family entertainment programmes and the organization of family excursions, sports projects and social events. Children also have their own programmes in the audio-visual broadcasting media, in addition to children's magazines.

Article 6

79. Details in this regard have already been provided within the context of article 5 (a).

Article 7

80. Many measures have been taken, through legislation, regulations, decrees, educational curricula and information programmes, to ensure equality among all human beings, to combat prejudices which lead to racial discrimination, to promote understanding and tolerance among nations and

peoples and to propagate the purposes and principles of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

81. All legislative enactments and conventions are freely accessible, being published in the Official Gazette, the press and other information media.

82. The educational curricula at all levels strongly advocate equality among all human beings and emphasize the need to combat any form of discrimination among them. The same applies to the information media and the audio-visual programmes that they disseminate on a daily and weekly basis and on special occasions.

83. Those programmes contain many Qur'anic verses and exhortations which further the aims that this article seeks to achieve. Symposia are also held to that end on various occasions, particularly during the celebration of the anniversary of the Universal Declaration of Human Rights and the anniversary of the establishment of the United Nations.

84. The Committee responsible for the preparation of this report sent letters to the Attorney-General, the Secretary-General of the Supreme Court and the People's Court in which it explained the Committee's task, namely the preparation of the eleventh to thirteenth periodic reports on the legislative, judicial and administrative measures taken by the Socialist People's Libyan Arab Jamahiriya pursuant to the provisions of the International Covenant on the Elimination of All Forms of Racial Discrimination, and requested them to provide it with full information concerning any cases of racial discrimination that had been brought before those competent courts, as well as the judgements handed down in connection with any complaints or grievances that had been filed by individuals or organizations. Those competent authorities replied that no cases of that type had been brought before them and they had not handed down any judgements on such matters.